

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 414 OF 2010

Wednesday, this the 02nd day of November, 2011

CORAM:

**HON'BLE Dr.K.B.S RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

N.S Viswanathan
Upper Division Clerk
INS Venduruthy
Naval Base, Kochi - 4

- Applicant

(By Advocate Mr.K Shri Hari Rao)

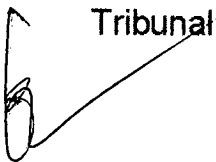
Versus

1. Union of India, represented
by its Secretary, Ministry of Defence
New Delhi
2. The Flag Officer Commanding-in-Chief
Head Quarters, Southern Naval Command
Naval Base, Kochi - 4
3. The Commanding Officer
INS Venduruthy
Naval Base
Kochi - 4

- Respondents

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

The application having been heard on 02nd November 2011, the
Tribunal on the same day delivered the following:



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

The applicant entered in the respondents organisation as a Casual Labourer in 1982 and was confirmed with intermittent artificial breaks. The Casual basis service continued till March 1989 and the applicant was absorbed in the regular cadre as LDC w.e.f 08.03.1989.

2. The government has introduced ACP scheme vide order dated 09.08.1999 (Annexure R-1) as per which on completion of 12 years first financial up-gradation was available for the stagnating employees. Similarly on completion of 24 years second ACP was available to such employees. According to the applicant, the period of casual service, if counted, would make him entitled to first ACP in 1999 itself. Whereas, the department has afforded the benefit of first ACP only in September 2003. The reason given by the respondents vide para (b) Annexure A-1 impugned order is as under:-

“ The ACP scheme is effective w.e.f 9th August 99. Though you have completed 12 years prior to that date, who first financial upgradation under ACP scheme has been granted with effected 03 September 2003 only since you were not found fit for the same during the period under consideration. “

3. The applicant has challenged the aforesaid order and prayed for the following relief:-

- (i) Call for the entire records leading to Annexure A1 order of the 2nd respondent issued through 3rd respondent and setaside the

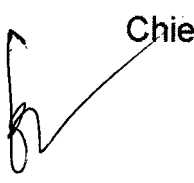
same.

(ii) Issue appropriate direction to the respondents to grant the applicant the benefit of 1st financial upgradation of ACP w.e.f 19.10.82 as LDC and grant him all the consequential benefits arising therefrom.

4. Respondents have contested the Original Application. They have stated that the applicant had secured only average report for the years 1995-96 to 1998-99 (1999-2000 being below average) and since the bench mark required for ACP purpose (as for promotion) is "Good", the applicant could be considered and afforded the first ACP on his acquiring the grading of Good which was from 2000-2001 onwards and accordingly he was afforded, the ACP benefit with effect from September 2003.

5. The applicant has filed his rejoinder reiterating his contentions relating to inclusion of casual service as the same had taken place in other cases. He has also relied upon the decision of Apex Court in the case of State of Karnataka Vs C.Lalitha (2006) 2 SCC 747, in this regard.

6. The counsel for the applicant argued that if the Casual service is taken into account the applicant could be eligible for grant of ACP from 1999 onwards. He had also stated that the reason given by the department is only with reference to the period of 12 years service and as such they cannot, in their reply, be permitted to state that the rejection of the applicant's case for grant of ACP was on the ground of his performance as per the ACRs. He relied upon the decision of the Apex Court in the case of Mahender Singh Vs Chief Election Commissioner (1978) 1 SCC 405.



7. Counsel for the respondents stated that the applicant had to fulfill the requisite bench mark and since he did not possess the same till the year 2000-2001, he was rightly considered and afforded the first ACP in September 2003, taking into account the record of 3 years.
8. Arguments were heard and documents perused. The reason given by the respondents vide Annexure A-1 was not with reference to reckoning of 12 years of service alone. As extracted above, the respondents have stated "you were not found fit for the same during the period under consideration". This goes to show that though the applicant had completed 12 years prior to 09.08.1999, still he could not be granted the ACP in view of his performance as per the Confidential Reports.
9. We do not find any illegality in the impugned order Annexure A-1 order. Consequentially, the Original Application is dismissed.
10. No costs.

(Dated, this the 02nd day of November, 2011.)


K. NOORJEHAN
ADMINISTRATIVE MEMBER


DR.K.B.S RAJAN
JUDICIAL MEMBER