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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00975/2015

Thursday, this the 22nd day of November, 2018

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

1. V.N.Chakrapani,
S/o.late Narayanan,
Cook, Fishery Survey of India,
Kochangadi, Cochin – 682 005.
2. T.K.Prathapan,
S/o.late Kandankunju,
Cook, Fishery Survey of India,
Kochangadi, Cochin – 682 005. ...Applicants

(By Advocate – Mr.C.S.G.Nair)

v e r s u s

1. Union of India represented by its Secretary,
Ministry of Agriculture, Animal Husbandry, Dairying & Fisheries,
New Delhi – 110 001.
2. Director General,
Fishery Survey of India,
Botawala Chambers, Mumbai – 400 001.
3. The Zonal Director,
Fishery Survey of India,
Kochangadi, Cochin – 682 005.
4. Director,
National Institute of Fisheries Post Harvest Technology & Training,
Ernakulam, Cochin – 682 016. ...Respondents

(By Advocate – Mr.Sinu G Nath, ACGSC)

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This application having been heard on 12th November 2018, the Tribunal on 22nd November 2018 delivered the following :

ORDER

Per : Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

The O.A is filed by Shri.V.N.Chakrapani & Shri.T.K.Prathapan aggrieved by rejection of their request for financial upgradation under ACP/MACP Scheme. The reliefs sought by the applicants are as under :

1. To quash and set aside Annexure A-23 issued by the 3rd respondent.
2. To declare that the applicants are entitled for financial upgradation under ACP Scheme to the pay scale of Bosun (uncertified) w.e.f 7.2.2003 and 1.3.2003 respectively and 2nd financial upgradation under the MACP Scheme to the pay scale of Bosun w.e.f 7.2.2011 and 1.3.2011 respectively.
3. To direct the respondents to grant 1st financial upgradation under ACP Scheme to the pay scale of Bosun (uncertified) w.e.f 7.2.2003 and 1.3.2003 respectively and 2nd financial upgradation to the pay scale of Bosun w.e.f 7.2.2011 and 1.3.2011 respectively with all consequential benefits including arrears of pay and allowances within a stipulated period.
4. Grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.
5. Grant cost of this O.A.

2. The brief facts of the case are as follows:

The applicants are presently working as Cooks under the 3rd respondent. They joined the service on 7.2.1991 and 1.3.1991 respectively as Cooks under the 4th respondent's Institution known as Integrated Fisheries Project (IFP). Thereafter they went on deputation to Fishery Survey of India and they were permanently transferred to Fishery Survey of

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India on 30.9.2005. On completion of 12 years of regular service the applicants became eligible for 1st financial upgradation under the ACP Scheme with effect from 7.2.2003 and 1.3.2003 respectively. On their repeated representations claiming the same, the 2nd respondents finally on 13.1.2015 issued Annexure A-12 Office Order granting 1st financial upgradation to both the applicants to the pay scale of Rs.5200-20200 with a Grade Pay of Rs.2000/- (pre-revised pay scale of Rs.3200-85-4900) with effect from 7.2.2003 and 1.3.2003 respectively. On receipt of the same both the applicants submitted another representation to the 2nd respondents stating that as per the hierarchy that existed in the 4th respondent's office at the relevant period, 1st financial upgradation should have been granted to the pay scale of Rs.4500-125-7000 (revised pay band is Rs.5200-20200 with a Grade Pay of Rs.2800/-) applicable to Bosun (uncertified) which was the next promotion post in the Integrated Fisheries Project (now known as NIPHT). The same has not been answered to. Thereafter on completion of 20 years of regular service as on 6.2.2011 and 28.2.2011 respectively they became eligible for 2nd financial upgradation under the MACP Scheme to the pay band Rs.9300-34800 with a Grade Pay of R.4200/- the pay scale applicable to Bosun as per the hierarchy in FSI.

2. Since the respondents took no action the applicants were compelled to approach this Tribunal by filing O.A.180/475/2015 claiming 1st financial

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upgradation under ACP Scheme to the pay scale of Bosun (uncertified) with effect from 7.2.2003 and 1.3.2003 respectively and 2nd financial upgradation to the pay scale of Bosun with effect from 7.2.2011 and 1.3.2011 respectively with all consequential benefits. The O.A was disposed of by this Tribunal on 19.6.2015 directing the respondents to consider the representations submitted by the applicants. Thereafter the applicants also filed a M.A and C.P for implementation of the said order dated 19.6.2015. In support of their claim they have cited order of judgment of the Hon'ble Supreme Court in SLP No.652/2005. However, vide Annexure A-23 dated 24.11.2015 the respondents have rejected their representation stating that the same cannot be acceded to.

3. As grounds the applicants submitted that the respondents have issued Annexure A-23 without application of mind and failed to consider the orders and judgments relied on by the applicants.

4. Per contra the respondents in their reply statement submitted that on being transferred and merged in FSI from IFP along with the posts, the terms and conditions to the staff transferred from IFP are applicable as that of FSI. Recruitment Rules of IFP provided promotion channel only for the Deckhands possessing Syrang Certificate with 7 years experience in mechanised fishing vessels and 3 years service in the grade for eligibility to

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the post of Bosun (uncertified). Since upgradation of the incumbents under ACP Scheme is similar to promotion, the fulfillment of terms and conditions under ACP are subject to the prescribed Recruitment Rules. The respondents state that the applicants did not fulfill any of the requirement nor did they work as Fishing Deckhands to claim the pay in the scale of Bosun (uncertified). Hence the claim of the applicants for grant of higher pay scales does not meet their eligibility. With regard to MACP the respondents submitted that the proposal is under preparation for placing before the Screening Committee and they will be granted upgradation as per their eligibility in the grade pay in the hierarchy of the pay scales with retrospective dates.

5. A rejoinder has been filed by the applicants stating that as per Annexure A-5 they were permanently absorbed in FSI with effect from 30.9.2005. Hence till 29.9.2005 they are entitled to get the benefits of financial upgradation under ACP Scheme which envisages financial upgradations to the next higher post in the hierarchy. As per Annexure A-3 Recruitment Rules the next higher post in IFP was Bosun (uncertified). They further reiterate that as per Annexure A-19 there is no need to possess the qualification prescribed for the post to which financial upgradation is granted under ACP Scheme as they are not seeking promotion as Bosun (uncertified) and they were governed by the rules that existed in IFP during

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the relevant period.

6. Heard Shri.CSG Nair, learned counsel for the applicant and Shri.Sinu.G.Nath, learned ACGSC for the respondents. We have perused all the available documents.

7. ACP/MACP are anti-stagnation measures adopted to compensate employees who have not had the benefit of promotion in their career. Both the applicants were given their first financial upgradation of ACP w.e.f. 07.02.2003 and 01.03.2003. As per the scheme the financial upgradation is to be offered in the next promotional scale. In this case the scale of pay is Rs.3200-85-4900. Due to the absence of posts of Cook in IFP on transfer to FSI, considering the service welfare of the applicants they were placed in the revised Pay Band-1 of Rs.5200-20200 plus Grade Pay of Rs.2000/- which corresponds to pre-revised pay scale of Rs.3200-85-4900. The Office order issued is seen at Annexure A12 and cannot be deemed incorrect.

8. This was more in the nature of a convenient placing in view of the organisation not having the post of Cook. The Recruitment Rules of IFP provided promotional channel for Deckhands possessing Syrang Certificate and fixed number of years of service to be eligible for the post of Bosun

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(Uncertified). It would be unrealistic to take the Bosun's post as the post next in the promotional hierarchy for the applicants. The judgment of Hon'ble Supreme Court in SLP No.652/2005 frowns on the insistence that a beneficiary should possess the necessary qualification for the promotional post. The Bosun being not a post in the next promotional hierarchy, this order cannot benefit the applicants.

9. After considering the facts before us and the arguments of both the Counsel, we are of the view that the OA does not merit any interference from this Tribunal. Accordingly, OA is dismissed. No costs.

(Dated this the 22nd day of November 2018)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00975/2015

- 1. Annexure A-1** – True copy of the Office Order No.31/91 dated 20.02.1991
- 2. Annexure A-2** – True copy of the Office Order No.49/91 dated 20.03.1991.
- 3. Annexure A-3** – True copy of the Recruitment Rule of Junior Deckhand
- 4. Annexure A-4** – True copy of the Office Order No.96/01 dated 10.08.2001.
- 5. Annexure A-5** – True copy of the Office Order No.57/01 dated 02.05.2001.
- 6. Annexure A-6** – True copy of the representation dated 06.03.2004.
- 7. Annexure A-7** – True copy of the representation dated 06.03.2004.
- 8. Annexure A-8** – True copy of the Office Order No.46/2006 dated 14.06.2006.
- 9. Annexure A-9** – True copy of the representation dated 12.12.2011.
- 10. Annexure A-10** – True copy of the representation dated 12.12.2011
- 11. Annexure A-11** – True copy of the representation dated 06.03.2014.
- 12. Annexure A12** - True copy of the Office Order No.FI-4/2003 E.II dt.13.1.2015.
- 13. Annexure A13** – True copy of the Office Order No.F8-32/2013 dated 20.01.2015.
- 14. Annexure A14** – True copy of the Office Order No.F-8-32/2013 dated 09.02.2015.
- 15. Annexure A15** - True copy of the representation dated 18.03.2015.
- 16. Annexure A16** – True copy of the representations dated 18.03.2015.
- 17. Annexure A17** – True copy of the reminders dated 13.05.2015.

18. **Annexure A18** - True Copy of the reminders dated 13.05.2015.
 19. **Annexure A19** - True copy of the judgment of the Hon'ble Supreme Court in Civil appeal No.3562/2007.
 20. **Annexure A20** – True copy of the Order dated 19.06.2015 in OA No.475/2015.
 21. **Annexure A21** – True copy of the Memo No.F I-65/2015 dated 05.11.2015.
 22. **Annexure A22** – True copy of the letter dated 06.11.2015.
 23. **Annexure A23** – True copy of Memo No.F 1-65/2015 dated 24.11.2015.
 24. **Annexure R3(a)** – True copy of the RR of integrated Fisheries project in respect of the post of Bosun.
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