

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/01095/2016

Tuesday, this the 18th day of December, 2018

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

C. Chandran, Fitter (Retired) Fishery Survey of India,
 Residing at 36/280, Type III, FS Quarters, St. Francis Xavier
 Church Cross Road, Pullepady, Ernakulam,
 Kochi – 682 018.

..... **Applicant**

(By Advocate : Ms. Sneha Rose)

V e r s u s

1. Union of India, rep. by the Secretary, Ministry of Agriculture,
 Department of Animal Husbandry and Dairying, Krishi Bhavan,
 New Delhi – 1.
2. Fisheries Survey of India, Ministry of Agriculture &
 Farmers Welfare, Department of Animal Husbandry, Dairying &
 Fisheries, Botwala Chambers, Sri P.M. Road, Fort, Mumbai
 400 001, represented by its Systems Analyst.
3. The Director, National Institute of Fisheries Post Harvesting
 Technology & Training, Govt. of India, Kochi – 16.
4. Senior Fisheries Scientist, Fisheries Survey of India,
 Kochi – 16.

..... **Respondents**

(By Advocate : Mr. N. Anilkumar, SCGSC)

This application having been heard on 04.12.2018 the Tribunal on
 18.12.2018 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

- “i. To quash Annex-A12 rejection letter issued by the 2nd respondent.

- ii. To issue a direction directing the respondents to re-fix the 1st ACP in the pay scale of pay of Rs. 5000-8000 in Grade Pay 4,200/- which is made applicable to the Assistant Foreman in the department, on implementation in OA 637/03 and OA 231/10, and all consequential benefits and consequent re-fixation on granting second ACP.
- iii. To issue a direction to grant arrears of pay on fixation of 1st ACP from 9.8.99, in the scale of pay of Rs. 5000-8000 with GP 4,200 instead of Rs. 4500-7000 as ordered in Annexure A3 and Annexure A5.
- iv. To issue a direction to fix the pay of the granting the 2nd ACP in the Grade Pay of Rs. 4600/- instead of Rs. 4200/- with effect from the respective date of such increment.
- v. Directing the respondents to grant 3rd financial upgradation with effect from 21.4.2013 in the grade pay of Rs. 4,800,
- vi. Award costs and incidental to this application.”

2. The brief facts of the case are that the applicant joined the 3rd respondent office in the year 1983 as a Fitter on ad hoc basis in the scale of pay of Rs. 260-400/- and regularized in the same year on 13.12.1983. The applicant was granted 1st ACP w.e.f 9.8.1999 in the scale of pay of Rs. 4,500-25-7,000/-. Later he was granted 2nd ACP w.e.f. 13.12.2007 in the scale of pay of Rs. 5,500-175-9,000/- (pre-revised) [9,300-34,800+GP Rs. 4200/- revised] w.e.f. 13.12.2007. The applicant retired from service on 31.10.2013 drawing Grade Pay of Rs. 4,200/-. The scale of pay of Assistant Foreman and Technical Assistant were one and the same during the period of 3rd Pay Commission and after the recommendation of the 4th Pay Commission. The 5th Pay Commission revised the scale of pay only for Technical Assistants as Rs.5,000-8,000/- with effect from 1.1.1996. The similarly situated Assistant Foreman approached this Tribunal in OA No.673 of 2003 claiming the scale of pay of Rs.5,000-8,000/- instead of Rs. 4,500-7,000/- at par with Technical Assistants as per the recommendation of

5th Pay Commission. This Tribunal allowed the OA treating the Assistant Foreman at par with Technical Assistants and thus allowed the claim of Rs.5,000-8,000/-. The order of the Tribunal was upheld by the Hon'ble High Court and the SLP dismissed. Accordingly, the respondents implemented the order and fixed the pay scale of Assistant Foreman as Rs.5,000-8,000/- with effect from 1.1.1996. Similarly situated persons again approached this Tribunal with OA No. 231 of 2010. This Tribunal once again allowed the said OA and the respondents implemented the same. The next hierarchical post in the case of the applicant is Refrigeration Mechanic and its scale of pay is fixed as Rs. 5,000-8,000/- (pre-revised) and revised to Rs. 9,000-34,800/- plus GP of Rs. 4,200/-. The applicant submitted a representation for granting him the pay scale of Rs. 5,000-8,000/- with effect from granting the 1st ACP. Since, the respondents have not taken a decision on the same the applicant filed OA No. 302 of 2015. This Tribunal disposed off the OA directing the respondents to consider the representation of the applicant. The respondents rejected the representation. The applicant submits that he is entitled to 3rd financial upgradation under MACP scheme with effect from 21.4.2013 in the pre-revised Grade Pay of Rs. 4,800/-. The contention of the respondents that applicant was on adhoc service from 21.4.1983 to 13.12.1983 is totally incorrect as the applicant joined service on 21.4.1983 and was regularized w.e.f. 13.12.1983. Aggrieved by the inaction on the part of the respondents in granting him the 3rd financial upgradation under MACP scheme the applicant has filed this Original Application seeking relief as above.

3. Notices were issued to the respondents. They entered appearance through Shri N. Anilkumar, SCGSC who contended that the pay of the applicant was upgraded from Rs. 4,500-7,000/- to Rs. 5,000-8,000/- in accordance with DOP&T's OM dated 28.7.2009 and he was granted 1st financial upgradation under ACP scheme w.e.f. 1.1.2006 in the pay scale of Rs. 5,000-8,000/- revised to PB-2 Rs. 9,300-34,800/- plus Grade Pay of Rs. 4,200/-. Similarly the applicant was granted 2nd financial upgradation w.e.f. 1.9.2008 in PB-2 Rs. 9,300-34,800/- plus Grade Pay of Rs. 4,600/- under the MACP scheme. The applicant is not entitled to 3rd financial upgradation under the MACP scheme w.e.f. 21.4.2013 as he had not completed 30 years of regular service. The applicant was regularized in the post of Fitter only w.e.f. 13.12.1983. Therefore, the adhoc service rendered from 21.4.1983 to 13.12.1983 cannot be considered while granting the benefits under MACP scheme. Respondents pray for dismissing the OA.

4. Heard Ms. Sneha Rose, learned counsel appearing for the applicant and learned SCGSC appearing for the respondents. Perused the records.

5. As regards, the claim of the applicant for grant of upgraded pay scale of Rs. 5,000-8,000/- with effect from the date of his 1st ACP is concerned, we find that the pay scale of Rs. 4,500-7,000/- was upgraded to Rs. 5,000-8,000/- as per the OM of the Ministry of Finance dated 28.7.2009 and accordingly, the applicant was granted 1st ACP w.e.f. 1.1.2006 in the upgraded scale of Rs. 5,000-8,000/- (revised 9,300-34,800/- plus GP 4,200/-). Further the applicant was granted 2nd financial upgradation under

the MACP scheme w.e.f. 1.9.2008 in PB-2 Rs. 9,300-34,800/- plus Grade Pay of Rs. 4,600/-. The respondents contend that applicant could not be granted 3rd financial upgradation since he got superannuated w.e.f. 31.10.2013 and had not completed 30 years of service. The claim of the applicant is that if the period from 21.04.1983 to 13.12.1983 is counted he is entitled for 3rd financial upgradation under MACP scheme.

6. The Hon'ble apex court in *Union of India & Ors. v. –* (2006) 6 SCC 57 held as under:

“13. Reading of the above two paragraphs makes it abundantly clear that so far as placing of an officer in the 'next higher grade' is concerned, what is relevant and material is that such official belonging to basic grades in Group 'C' and 'D' must have completed "sixteen years of service in that Grade". The said paragraph, no where uses the connotation 'regular' service. Paragraph 2 which provides for Departmental Promotion Committee and consideration of cases of officials for 'promotion', provides for sixteen years of 'regular' service. The Tribunal, therefore, rightly considered paragraph 1 as relevant and held that basic eligibility condition for being placed in the next higher grade is that the officer must have completed sixteen years of service in the basic grade in Group 'C' and Group 'D'. Though in other paragraphs, the service was qualified by the adjective 'regular', the said qualification was not necessary for the purpose of paragraph 1. Since the employee wanted the benefit of placement in 'next higher grade', what was required to be established by him was that he had completed sixteen years of service in the grade and the said requirement had been complied with in view of the fact that with effect from September 30, 1983 he was appointed as Warrant Officer. He was, therefore, entitled to the benefit of 'next higher grade' under paragraph 1 from 1999. The authorities were, therefore, not justified in rejecting the claim and accordingly the petition was allowed. The High Court rightly upheld the direction of CAT.

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19. Since the respondent had completed sixteen years of service in 1999, he would be entitled to the benefit of paragraph 1 of Time Bound Promotion Scheme and the action of the authorities in not granting the said benefit was illegal and contrary to law. The Central Administrative Tribunal as well as the High Court were, therefore, right in setting aside the said action and by directing the authorities to extend the benefit of the Scheme to the respondent. We see no infirmity in the reasoning adopted and conclusion recorded by the CAT or by the High Court and find no substance in the appeal of the appellants.”

7. Considering the above decision of the Hon'ble apex court wherein it has been categorically observed that the word regular service is nowhere mentioned, meaning thereby that the adhoc service followed by regular appointment shall be taken into account for the purpose of completing the eligibility for the promotional post. In the present case if the adhoc service of the applicant is taken into consideration then applicant is entitled to get his pay fixed by granting 2nd ACP in PB-2 with Grade Pay of Rs. 4,600/- and not Rs. 4,200/- with effect from the date of completion of 24 years of service on 21.04.2007. However, as regards grant of 3rd MACP is concerned we find that vide OM dated 19th May, 2009 with regard to the MACP scheme it is stipulated in paragraph 9 as under:

“9. 'Regular service' for the purposes of the MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Service rendered on adhoc/contract basis before regular appointment on pre-appointment training shall not be taken into reckoning. However, past continuous regular service in another Government Department in a post carrying same grade pay prior to regular appointment in a new Department, without a break, shall also be counted towards qualifying regular service for the purposes of MACPS only (and not for the regular promotions). However, benefits under the MACPS in such cases shall not be considered till the satisfactory completion of the probation period in the new post.”

Therefore, the applicant is not entitled for grant of 3rd MACP on completion of 30 years of service w.e.f. 21.04.2013 in the next higher Grade Pay i.e. PB-2 plus Grade Pay of Rs. 4,800/-.

8. Accordingly, the OA is disposed of directing the respondents to grant 2nd ACP to the applicant in PB-2 with Grade Pay of Rs. 4,600/- with effect from the date of completion of 24 years of service i.e. on 21.04.2007 after taking into consideration the adhoc service rendered by him in view of the

law laid down by the apex court in *M. Mathivanan*'s case (supra). The respondents shall pass appropriate orders granting the benefit to the applicant within sixty days of receipt of a copy of this order. There shall be no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

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APPLICANT'S ANNEXURES

- Annexure A1** - True copy of the order No. 1-6/2006E II dated 8.4.2011.
- Annexure A2** - True copy of the order No. 8-32/2007 Vol.II dated 18.5.2011.
- Annexure A3** - True copy of the order in OA 673/03 dated of the Hon'ble Tribunal.
- Annexure A4** - True copy of the order in OA 231/2010 dated of the Hon'ble Tribunal.
- Annexure A5** - True copy of the order of re fixation dated 4.6.2012.
- Annexure A6** - True copy of the letter No. F.3-1/2009-E.I dated 14.12.2009.
- Annexure A7** - True copy of the representation dated 22.2.2013.
- Annexure A8** - True copy of the memorandum No. F.8-32/2007 Vol.II dated 12.6.13.
- Annexure A9** - True copy of the representation dated 29.5.2014.
- Annexure A10** - True copy of the representation dated 3.9.2014.
- Annexure A11** - True copy of the order in OA No. 302/12 dated 10.4.2015 of the Hon'ble Tribunal.
- Annexure A12** - True copy of the letter No. F1-63/2016 dated 25.2.2016 issued by 2nd respondent and communicated through 3rd respondent.

RESPONDENTS' ANNEXURES

- Annexure R1** - True copy of the office order No. F.1-6/2006-E.II dated 7.2.2017.
- Annexure R2** - True copy of the order No.F.1-17/201-E.II dated 13.2.2017.

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