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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/01024/2016

Monday, this the 31st day of December, 2018

CORAM:

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

K.K.Gireesan, S/o.Kumaran,
Retired Daftry, Central Institute of Fisheries,
Nautical and Engineering Training, Kochi – 16.
Residing at Sivasakthi, Dharmastha Temple Road,
West Kadungallur P.O., Aluva, Ernakulam District, Kerala. ...Applicant

(By Advocate Ms.Jishamol Cleetus)

V e r s u s

1. Union of India
represented by the Secretary to Government of India,
Ministry of Agriculture & Farmers Welfare,
Department of Animal Husbandry, Dairying and Fisheries,
New Delhi.
2. The Director,
Central Institute of Fisheries,
Nautical and Engineering Training, Kochi – 16. ...Respondents

(By Advocate Mr.S.R.K.Prathap,ACGSC)

This application having been heard on 18th December, 2018, the
Tribunal on 31.12.2018 delivered the following :

O R D E R

Per : HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

O.A.No.180/1024/2018 is filed by Shri.K.K.Gireesan, retired Daftry,
aggrieved by Annexure A-4 order dated 10.11.2016 which was issued in
response to his representation dated 25.2.2015 stating that his request to

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consider the adhoc service for the purpose of financial upgradation under ACP/MACP Scheme was not agreed to. The reliefs sought by the applicant is as follows :

1. Call for the records leading to the issuance of Annexure A-4 letter dated 10.11.2016 and to quash the same being illegal.
2. For a declaration that the applicant is entitled to get reckoned the adhoc service with effect from 7.3.1979 and accordingly his 2nd financial upgradation under the ACP scheme to be preponed to 7.3.2003 and grant the subsequent financial upgradation under the MACP scheme ie. the 2nd and 3rd financial upgradation under the MACP scheme to be granted w.e.f 1.9.2008 and 7.3.2009 respectively.
3. For a direction to the respondents to grant the ACP and MACP benefits to the applicant by reckoning his service in the department from his initial appointment including his valuable service of 5 years rendered as adhoc with all consequential benefits including arrears and interest.
4. To grant such other reliefs as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The applicant entered service as adhoc Watchman after following the prescribed procedures for recruitment viz. Sponsorship from Employment Exchange in the office of the 2nd respondent on 7.3.1979. His service from 7.3.1979 till the date of regularization ie. 2.7.1984 was without any break and he had also drawn annual increments during that period. It is submitted that while granting financial upgradation under the ACP & MACP Schemes the initial 5 years of adhoc service of the applicant was not taken into consideration and service from the date of regularization only was considered by the respondents. He claims that he is entitled for the 2nd financial upgradation under the ACP Scheme with effect from 7.3.2003 and

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the 3rd financial upgradation under the MACP Scheme with effect from 1.9.2008 and 7.3.2009. The applicant retired from service as Daftry on 31.3.2012.

3. The learned counsel for the applicant relied on order of the Madras Bench of this Tribunal in O.A.No.105/2010 dated 28.4.2011 wherein it has been held that the period of service rendered on adhoc basis is to be counted for the purpose of granting benefits under ACP Scheme. The respondents challenged the said order before the Hon'ble High Court of Madras in W.P.No.24104/2011 which was dismissed vide judgment dated 28.2.2014.

4. As grounds the applicant submits that the service benefit granted to an employee by a judicial order is applicable to similarly situated other employees of a department and the other employees of the department cannot be forced to approach the judiciary for the same benefit as per the Apex Court judgments in **State of Karnataka v. C.Lalitha (2006) 2 SCC 745** and **Inder Pal Yadav v. Union of India (1985) 2 SCC 648**. He has also relied on the judgment of the Apex Court in **Aswani Kumar v. Union of India (1997) 2 SCC** wherein it has been held that all the affected person whether party or not should be included while granting the relief.

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5. Per contra, the respondents in their reply statement submitted that the Government of India, Department of Personnel and Training has vide O.M.No.35034/1/97-Estt.(D) dated 9.8.1999 introduced the Assured Career Progression (ACP) Scheme for Central Government civilian employees with effect from 9.8.1999. As per the ACP Scheme if an employee has not been given any promotion he shall be allowed two financial upgradations on completion of 12 years and 24 years of regular service respectively to the pay scale of the next promotional post, subject to the various conditions as stipulated in the O.M. As per the ACP Scheme certain categories of employees such as employees, adhoc and contract employees shall not qualify for benefits and only regular service is to be counted for the purpose of granting the financial upgradation under this Scheme. Further as per ACP and MACP Schemes regular service is interpreted to mean the eligible service counted for the purpose of promotion/financial upgradation in terms of relevant recruitment/service rules. As per the clarification at point of doubt at Sl.No.11 of the DOPT OM No.35034/1/97-Estt.(D) Vol.IV dated 10.2.2000 the same states that in the case of an employee appointed on adhoc basis and who is subsequently regularized and even if the adhoc service is counted towards increment, the same shall not be counted for the purpose of ACP Scheme. As per MACP Scheme also service rendered on adhoc/contract basis before regular appointment or pre-appointment training shall not be taken into reckoning for financial upgradation. As such, the applicant's initial period of adhoc service cannot be taken into account for the purpose of

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financial upgradation under the ACP and MACP Scheme as these schemes do not allow reckoning of adhoc service. Further it is submitted that on his retirement on 31.3.2012 he accepted all his pensionary benefits with respect to last pay drawn in service. He has not made any representation claiming 2nd and 3rd financial upgradations from 1.9.2008 and 7.3.2009 while he was in service. Only after three years of his retirement he filed Annexure A-3 representation before the respondents for financial upgradation. Lastly it is submitted that the applicant has been allowed two financial upgradations under ACP/MACP Schemes with effect from 2.7.2008 and 1.9.2008 by counting his regular service with effect from 2.7.1984. Since he does not have the requisite service of 30 years regular service he could not be allowed the 3rd financial upgradation under MACP Scheme.

6. A rejoinder has been filed by the applicant reiterating the contentions raised in the O.A. It is submitted that his initial appointment as per rules in the office of the 2nd respondent was with effect from 7.3.1979. Hence such appointment cannot be held to be stop gap/adhoc appointment.

7. Heard Smt.Jishamol Cleetus, learned counsel for the applicant and Shri.S.R.K.Prathap, learned ACGSC for the respondents. All pleadings, documentary and oral, are perused. Learned counsel for the applicant brought to our notice an order of this Tribunal dated 10.10.2017 in O.A.No.180/1086/2014 wherein under a similar set of facts the O.A was

allowed following the order of the Madras Bench of this Tribunal in O.A.No.105/2010 dated 28.4.2011. The relevant part of the order reads thus :

11. This question appears to be squarely covered by the judgment of the CAT Madras Bench in OA 105/2010 when an identical issue of posting of Topass on temporary/adhoc basis was considered and it was ordered that in a posting where all procedure was met, the appointment cannot be treated as temporary or as a stop-gap arrangement. The Bench had ordered that his services are to be counted from the date of his posting on temporary/adhoc basis as Topass. This view naturally covers the ground here. So we come to the conclusion that the first part of the prayer that the applicant is entitled to count his service from 17.6.1982, when he was initially posted as Topass, is found valid. Thus he will be eligible for 2nd up-gradation under the ACP Scheme when he completed 24 years from 23.6.1982 ie., on 23.6.2006.

12. The second issue raised is whether he is eligible for 2nd ACP even after completion of 24 years of service as he does not possess the necessary qualification for promotion into the next post which is available to him. The respondents have cited the provision under MACP guidelines wherein it is stated that the candidate should necessarily possess qualification required for promotion to the next higher post for being considered for 2nd financial up-gradation. It was on this ground that the claim of the applicant for the 2nd up-gradation, although with effect only from 2008 onwards, was rejected. We have considered this point also in detail. The post of Cook Grade I does not have a promotion post to which the applicant could aspire for. This is admitted by the respondents, although they have brought in the argument that the post of Sr.Deckhand which was in the pre-revised scale of Rs. 3200-4900 is an analogous post of the applicant's post of Cook Grade I, and there exists a promotion post for the said post of Sr.Deckhand as Bosun which is in the per-revised pay scale of Rs. 5000-8000. The argument thus is that although the Cook Grade I category does not have a promotion post to aspire for, the analogous post of Sr.Deckhand does have a promotion post. The applicant according to the respondents does not possess the necessary quantification for the post of Bosun which is a certificate of competency as Mate, Fishing Vessel issued by the Mercantile Marine Department. They have cited this as a condition contained in the DOP&T OM dated 19.8.1999, that, as the applicant does not fulfill the condition of the promotion post, ie., qualification required for promotion to the post of Bosun, the applicant could not be granted the 2nd financial up-gradation.

13. This view has been examined in the judgment of the Hon'ble Supreme Court in **Civil Appeal No.3562 of 2007** produced as Annexure A12 along with the rejoinder in the case of **M.N Raghunatha Kurup; and others Vs. Union of India and others**. The Hon'ble Supreme Court on this point had ruled as follows :

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“In the ACP Scheme, which is Annexure P1 to this appeal, nowhere it is mentioned that for getting the benefit of ACP, the applicant must possess the qualification of promotional post.”

The same issue had also come up before this Tribunal in OA 601/2012 (Annexure A13) where the contention of the respondents that the ACP benefit is to be denied to an applicant on the ground that he did not possess the qualification for promotion post, was rejected, on the lines of the Hon'ble Supreme Court's order. The very same view was once again followed in OA 761/2012 (Annexure A14).

14. After due consideration, we are of the view that the orders referred to above clearly cover the field so far as the eligibility of the applicant for the 2nd ACP is concerned. So we would order that the applicant is eligible for his 2nd financial up-gradation under ACP Scheme on completion of 24 years from the date of his initial appointment as Topass which is 24 years after 23.6.1982. The point relating to his eligibility for 2nd financial up-gradation has been duly settled by the Hon'ble Supreme Court's order in a similar case as well as the orders of this Tribunal. Hence the applicant is not to be denied his 2nd financial up-gradation under ACP Scheme on the ground that he does not possess qualifications of the promotional post in the analogous category. Based on the two points above, the applicant would also be eligible for the 3rd MACP benefits when he has completed 30 years of his initial appointment ie., on 23.6.2012.

15. The O.A succeeds. Applicant is entitled to all consequential benefits arising from the order above. The respondents will revise the benefits due to him and disburse the same at the earliest and at any rate within three months from the date of receipt of a copy of this order. No order as to costs.

8. Further through the judgment of the Apex Court in **Rudra Kumar Sain & Ors. v. Union of India & Ors. (2001) SLJ 1** the applicant highlights the meaning of the term *ad hoc*, *stop gap* and *fortuitous* in service jurisprudence.

The relevant part of the judgment reads :

“ The three terms *ad hoc*, *stop gap* and *fortuitous* are in frequent use in service jurisprudence. In the absence of definition of these terms in the rules in question we have to look to the dictionary meaning of the words and the meaning commonly assigned to them in service matters. The meaning given to the expression *fortuitous* in Strouds Judicial Dictionary is accident or fortuitous casualty. This should obviously connote that if an appointment is made accidentally, because of a particular emergent situation and such appointment obviously would not continue for a fairly long period. But an appointment made either under Rule 16 or 17 of the Recruitment Rules, after due consultation with the High Court and the

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appointee possesses the prescribed qualification for such appointment provided in Rule 7 and continues as such for a fairly long period, then the same cannot be held to fortuitous. In Blacks Law dictionary, the expression fortuitous means occurring by chance, a fortuitous event may be highly unfortunate. It thus, indicates that it occurs only by chance or accident, which could not have been reasonably foreseen. The expression ad hoc in Blacks Law Dictionary, means something which is formed for a particular purpose. The expression stop-gap as per Oxford Dictionary, means a temporary way of dealing with a problem or satisfying a need.

In Oxford Dictionary, the word ad hoc means for a particular purpose; specially. In the same Dictionary, the word fortuitous means happening by accident or chance rather than design.”

9. In the light of the above facts, we are of the view that the case of the applicant is squarely covered by the orders referred to above. The O.A is allowed. We direct that the applicant is eligible for his 2nd financial upgradation under ACP Scheme on completion of 24 years from the date of his initial appointment as Watchman on 7.3.1979 and his 2nd financial upgradation under the ACP Scheme is preponed to 7.3.2003. On the basis of the same, the applicant would also be eligible for the 3rd MACP benefits when he has completed 30 years from the date of his initial appointment ie. on 7.3.2009. Applicant is entitled to all consequential benefits arising from the order as directed above. The respondents shall revise the benefits due to him and disburse the same at the earliest, at any rate, within a period of three months from the date of receipt of a copy of this order. No costs.

(Dated this the 31st day of December 2018)

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/01024/2016

- 1. Annexure A1** – A copy of the Hon'ble CAT Madras Bench order dated 28.4.2011 in O.A.No.105/2011.
 - 2. Annexure A2** – A copy of the Hon'ble High Court judgment dated 28.2.2014 in W.P.No.24104/2011.
 - 3. Annexure A3** – A copy of the representation dated 25.2.2015 submitted by the applicant to the 2nd respondent.
 - 4. Annexure A4** – A copy of the Office Order No.35-1/2013-Adm. dated 10.11.2016 issued by the 2nd respondent to the applicant.
 - 5. Annexure R1** – A copy of the OM No.35034/1/97-Estt(D) dated 9.8.1999 issued by the Department of Personnel and Training, Government of India.
 - 6. Annexure R2** – A copy of the OM No.35034/1/97-Estt(D)(Vol.IV) dated 10.2.2000 issued by the Department of Personnel and Training, Government of India.
 - 7. Annexure R3** – A copy of the OM No.35034/3/2008-Estt(D) dated 19.5.2009 issued by the Department of Personnel and Training, Government of India.
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