

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00653/2015

Friday, this the 25th day of January, 2019

C O R A M :

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

K.P.Syed Mohammed,
S/o.late Ali Mohammed,
Retired Bosun, Fishery Survey of India,
Cochin Base, Kochangadi, Kochi – 5.
Residing at Papada House, Agathi Island P.O.
U.T of Lakshadweep – 682 553.

...Applicant

(By Advocate – Mr.T.A.Rajan)

v e r s u s

1. Union of India represented by Secretary,
Government of India, Ministry of Agriculture,
Department of Animal Husbandry, Dairying and Fisheries,
New Delhi – 110 001.
2. The Director General,
Fishery Survey of India, Botawala Chambers,
Sir P.M.Road, Mumbai – 400 001.
3. The Zonal Director,
Fishery Survey of India Cochin Base,
Kochangadi, Kochi – 5.
4. The Senior Administrative Officer,
Fishery Survey of India, Botawala Chambers,
Sir P.M.Road, Mumbai – 400 001. ...Respondents

(By Advocate Mr.M.K.Padmanabhan Nair, ACGSC)

This Original Application having been heard on 21st January 2019, the Tribunal on 25th January 2019 delivered the following :

ORDER

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

The O.A is filed by Shri.K.P.Syed Mohammed, who superannuated from service on 30.4.2015, aggrieved by Annexure A-6 Office Order dated 9.3.2015 refixing his pay with lesser Grade Pay with effect from 1.1.2006, Annexure A-8 order dated 1.5.2015 rejecting his representation requesting to cancel the aforesaid Office Order dated 9.3.2015 and Annexure A-9 Office Order dated 22.12.2014 for not granting the financial upgradation benefits under the Modified Assured Career Progression (MACP) Scheme in the Pay Band and Grade Pay of the promotional post. He seeks the following reliefs in this O.A :

I. Call for the records leading to Annexure A-6, Annexure A-8 and Annexure A-9 and set aside them.

II. Declare that the refixation of the pay of the applicant in Annexure A-6 order illegal.

III. Direct the respondents to grant the second financial upgradation benefit to the applicant under the MACP Scheme in the pay band and grade pay of the promotional post duly taking into account the pay drawn by the applicant as per Annexure A-5.

IV. Direct the respondents to refix the pay and pensionary benefits of the applicant on the basis of the pay arrived in relief No.III.

V. Award costs of and incidental to this application.

VI. Grant such other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The applicant commenced his service as Bosun on adhoc basis on 1.2.1985 and was regularized with effect from 19.1.1987 in the Central Institute of Fisheries Nautical and Engineering Training (CIFNET) Madras. Later after being rendered surplus he was appointed as

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Bosun in the Integrated Fisheries Project (IFP), Kochi on 8.6.1995. Thereafter due to reorganization of IFP he was transferred to Fishery Survey of India (FSI) on 19.5.2005 and from there he retired on superannuation on 30.4.2015.

3. It is stated that the applicant has been granted first financial upgradation under the ACP Scheme with effect from 9.8.1999 to the pay scale of Rs.6500-10500/- . On implementation of the recommendations of the 6th Pay Commission, though initially he had been granted the Revised Pay Band PB2 Rs.9300-34800/- and Grade Pay of Rs.4200/- as on 1.1.2006, later on the basis of Annexure A-4 OM F.No.1/1/2008-1C dated 13.11.2009 which granted the revised pay structure of Grade Pay of Rs.4600/- in the Pay Band PB-2 to posts that existed in the pre-revised pay scale of Rs.6500-10500 as on 1.1.2006 and which were granted the normal replacement pay structure of Grade Pay of Rs.4200/- in the Pay Band PB2, his pay was refixed with effect from 1.1.2006 in the Pay Band PB-2 Rs.9300-34800 with Grade Pay of Rs.4600/-, a copy of which is available at Annexure A-5. While so, without any prior notice and without giving an opportunity of being heard the 3rd respondent by order dated 9.3.2015 cancelled Annexure A-5 order and refixed his pay with lesser Grade Pay of Rs.4200/-, a copy of which is produced as Annexure A-6. Against the same the applicant submitted Annexure A-7 representation which was rejected by the respondents stating that Annexure A-4 OM was applicable to the post which were in the pay scale of Rs.6500-10500 prior to 1.1.2006 and hence his pay

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fixation based on the said OM to the Grade Pay of Rs.4600/- with effect from 1.1.2006 is incorrect and further that the financial upgradation granted to him vide order dated 22.12.2014 (Annexure A-9) is in order.

4. As grounds the applicant submitted that the other Bosuns in the FSI are getting the Grade Pay of Rs.4600/- till now. With regard to grant of financial upgradation in the Pay Band and Grade Pay of the next promotional post in the hierarchy he has cited the decisions in O.A.No.904/2012 and O.A.No.1038/CH/2010 rendered by the Principal Bench and Chandigarh Bench respectively. It is submitted that the order of the Chandigarh Bench has been confirmed by the Hon'ble High Court of Punjab and Haryana and Hon'ble Supreme Court. He has also cited an order of this Tribunal in O.A.No.816/2016 in a similar matter and submitted that the financial upgradations granted to him vide Annexure A-9 is against all these decisions.

5. Per contra, the respondents in their reply statement submitted that consequent on implementation of 6th Pay Commission, the pre-revised pay scale of Rs.5000-8000/-, Rs.5500-9000/- and Rs.6500-10500/- stood merged and were replaced with a common replacement band (PB-2) of Rs.9300-34800/- with Grade Pay of Rs.4200/-. Based on this the revised pay scale for the post of Bosun were classified in the (PB-2) of R.9300-34800/- with Grade Pay of Rs.4200/-. Since the 1st financial upgradation under ACP Scheme granted to the applicant in the pre-revised scale of

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Rs.6500-10500 carried the same grade pay of Rs.4200/- as the pre-revised scale of Rs.5000-8000/- earlier held by him, the same was ignored. It is submitted that as per the provisions laid down in the OM dated 19.5.2009 which prescribes immediate next Grade Pay in the hierarchy of pay, the applicant was subsequently granted 1st financial upgradation in the (PB-2) Rs.9300-34800/- in the Grade Pay of Rs.4600/- and 2nd financial upgradation in the Grade Pay of Rs.4800/- with effect from 1.9.2008 under the MACP Scheme. It is pointed out that the financial upgradation under MACP Scheme prescribes the next Grade Pay in the hierarchy of the pay and not in the promotional post. Hence the claim for grant of financial upgradation under MACP Scheme on the lines of ACP Scheme or on par with regular promotion is not consistent with Government Orders. With regard to Annexure A-4 OM issued by the Government of India, Ministry of Finance dated 13.11.2009 it is submitted that it has been clearly mentioned therein that the post already existed in the pre-revised scale of Rs.7450-11500/- and the posts being upgraded from the scale of Rs.6500-10500/- should be merged with the post in the scale of Rs.7450-11500 with Grade Pay of Rs.4600/-. In the light of the aforesaid OM the pay granted to the applicant as per Annexure A-5 was reduced appropriately to the Grade Pay of Rs.4200/- in the post of Bosun as per his entitlement.

6. Heard Shri.T.A.Rajan, learned counsel for the applicant and Shri.M.K.Padmanabhan Nair, learned ACGSC for the respondents. The short question that arises for consideration is how to fix the initial pay of the

applicant in the revised pay structure with effect from 1.1.2006. The Government of India vide O.M dated 13.11.2009 had given specific recommendations that on account of the merger of these three scales, some posts which constituted feeder and promotion grades would come in an identical grade and were therefore, granted higher Grade Pay of Rs.4600/- to some categories of these posts. Further, in case it is not feasible to merge the posts in these pay scales on functional consideration, the posts in the scale of Rs.5000-8000 and Rs.5500-9000 should be merged with the posts in the scale of Rs.6500-10500 being upgraded to the next higher grade in the pay band PB-2 with Grade Pay of Rs.4600/- corresponding to the pre-revised scale of Rs.7450-11500. In case a post already exists in the scale of Rs.7450-11500, the post being upgraded from the scale of Rs.6500-10500 should be merged with the post in the scale of Rs.7450-11500. The relevant part of the OM reads as under :

3. Consequent upon the Notification of CCS (RP) Rules, 2008, Department of Expenditure has received a large number of references from administrative ministries/departments proposing upgradation of the posts which were in the pre-revised scale of Rs.6500-10500 as on 1.1.2006 by granting them grade pay of Rs.4600 in the pay band PB-2. The matter has been considered and it has now been decided that the posts which were in the pre-revised scale of Rs.6500-10500 as on 1.1.2006 and which were granted the normal replacement pay structure of grade pay of Rs.4200 in the pay band PB-2, will be granted grade pay of Rs.4600/- in the pay band PB-2 corresponding to the pre-revised scale of Rs.7450-11500 w.e.f. 1.1.2006. Further, in terms of the aforementioned provisions of CCS (RP) Rules, 2008, in case a post already existed in the pre revised scale of Rs.7450-11500, the posts being upgraded from the scale of Rs.6500-10500 should be merged with the post in the scale of Rs.7450-11500.

4. Accordingly, in terms of Rule 6 of CCS (RP) Rules, 2008, revised pay of Government servants in the pre-revised scale of Rs.6500-10500 who were earlier granted grade pay of Rs.4200 and who have already exercised their option for drawal of pay in the revised pay structure in the format prescribed in the Second Schedule to the Rules, will be fixed again in accordance with illustration 4A annexed to CCS (RP) Rules, 2008.

(emphasis supplied)

7. With regard to the subject matter relating to grant of Grade Pay in the promotional hierarchy, it is seen that the subject matter is seized of by the Hon'ble Supreme Court in S.L.P.(C) No.21813/2014 arising out of the judgment of the Hon'ble High Court of Kerala in O.P.No.2000/2013. The Hon'ble Supreme Court by order dated 8.8.2014 had stayed the judgment of the Hon'ble High Court of Kerala and the matter is still pending.

8. In view of the above, while keeping open the Relief No.III seeking Grade Pay in the promotional post, we dispose of the O.A by directing the respondents to refix the pay of the applicant with effect from 1.1.2006 in the Pay Band PB-2 Rs.9300-34800 with Grade Pay of Rs.4600/-. The consequential benefits arising out of this exercise shall be paid to the applicant within a period of three months from the date of receipt of a copy of this order. No order as to costs.

(Dated ts the 25th day of January 2019)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00653/2015

1. Annexure A-1 - True copy of order No.A1/1-2/97/Part III dated 1.8.2000 of the Director in Charge, Integrated Fisheries Project, Kochi.
2. Annexure A-2 - True copy of the fixation statement No.A1/1-1/2000 dated 14.2.2000 of the applicant.
3. Annexure A-3 - True copy of the fixation statement of the applicant dated 20.9.2008.
4. Annexure A-4 - True copy of the Office Memorandum F.No.1/1/2008-1C dated 13.11.2009.
5. Annexure A-5 - True copy of the order No.F8-72/2006 dated 1.10.2010 of the third respondent.
6. Annexure A-6 - True copy of the order F.No.F8-32/2013 dated 9.3.2015 of the third respondent.
7. Annexure A-7 - True copy of the representation dated 27.3.2015 submitted by the applicant.
8. Annexure A-8 - True copy of the order No.F 1-4/2014 E.II dated 1.5.2015 of the 4th respondent.
9. Annexure A-9 - True copy of the order No.F.1-14/2014 E.II dated 22.12.2014 of the second respondent.
10. Annexure R-1 - True copy of the Government of India, DOPT OM No.35034/3/2008 Estt.(D) dated 19.5.2009.
11. Annexure R-2 - True copy of the letter No.F1-14/2014 Estt. dated 3.3.2015.
