

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00488/2015

Monday, this the 4th day of February, 2019

CORAM:

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

K.P.Syed Mohammed,
Aged 60 years,
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.Lakshadweep, Pin-682 553.

....Applicant

(By Advocate Mr.T.A.Rajan)

V e r s u s

1. The Union of India,
represented by Secretary,
Government of India,
Ministry of Agriculture,
Department of Animal Husbandry,
Diarying and Fisheries, New Delhi – 110 001.
2. The Director General,
Fishery Survey of India,
Botawala Chambers, Sir PM 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 Mr.N.Anil Kumar, Sr.PCGC for Respondents)

.2.

This application having been heard on 25^h January, 2019 the Tribunal on 4th February, 2019 delivered the following :

ORDER

HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

OA No.488/2015 is filed by Shri K.P.Syed Mohammed seeking the following reliefs:

- I) Call for the records leading to Annexure A10 order and set aside the same.
- II) Declare that the applicant is entitled to get third financial upgradation benefits under the MACP Scheme with effect from 01.02.2015.
- III) Direct the respondents to grant the third financial upgradation benefits under the MACP Scheme with effect from 01.02.2015.
- IV) Direct the respondents to refix the pension and pensionary benefits of the applicant on the basis of the pay arrived at on granting the third financial upgradation benefit under the MACP scheme and also direct the respondents to grant the consequential difference in pension and pensionary benefits with 12% interest.
- V) Award costs of and incidental to this application.
- VI) Grant such other relief, which this Honourable Tribunal may deem fit and proper in the circumstances of the case.

2. The applicant has retired from service on superannuation on 30.04.2015 as Bosun, Fisheries Survey of India. He is aggrieved by the non-granting of 3rd financial upgradation benefit under Modified Assured Progression Scheme in short MACP. On 3rd March, 1984 an interview was conducted for the post of Bosun by the respondents and that the applicant was found successful and he has been given appointment to the post of Bosun in the pay scale of Rs.550-750 on adhoc basis with effect from 01.02.1985 for a period of six months. This

.3.

adhoc appointment was extended for a further period of six months. On completion of one year, the applicant has been granted the post of Bosun by granting him annual increment of Rs.20/- with effect from 01.02.1986. Later on his adhoc appointment is regularised by Annexure A4 order dated 21.03.1988 . The applicant rendered surplus in CIFNET, was again appointed as Bosun in the Integrated Fisheries Project (IFD) by order dated 23.06.1995. In the meantime the Government of India by OM No.35034/3/2008 Estt dated 19.05.2009 had introduced MACP Scheme for Central Government Civilian Employees in supersession of earlier ACP Scheme.

3. As per the MACP Scheme the employees are entitled to three financial upgradation benefits on completion of 10, 20 and 30 years of service. The said Scheme came into force with effect from 01.09.2008. The applicant has been granted first and second financial upgradation benefits under ACP/MACP Scheme. Before retirement the applicant had completed 30 years of service on 01.12.2015. As such he is entitled to get 3rd financial upgradation benefit under the MACP Scheme with effect from 01.02.2015. But the same was not given to the applicant. Thus, the applicant made a representation dated 27.03.2015 to the second respondent. The respondents have rejected the claim of the applicant on 01.05.2013 stating that in accordance with condition no.9 of the above said OM dated 19.05.2009, the “regular service” for the purpose of MACP 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

.4.

absorption/reemployment basis and the service rendered on adhoc/contract basis before regular appointment on pre appointment training shall not be taken into account. Since the applicant appointed to the post of Bosun (C), CIFNET, Kochi on adhoc basis, his services of Bosun(C), CIFNET will not be counted for the purpose of financial upgradation under the MACP Scheme. Feeling aggrieved by this and in order to redress his grievance he has approached this Tribunal by filing this OA. Notices were issued to the respondents, they put up their appearance through a Counsel, Mr.N.Anilkumar, Sr.PCGC and filed their detailed reply.

4. In the reply the respondents almost admitted the factual position of the applicant. It is submitted that the Government of India introduced a Modified Assured Career Progression Scheme (MACP) vide O.M.NO.35034/3/2008 Estt(D) dated 19.05.2009 which envisaged three financial upgradation under the scheme on completion of 10, 20 and 30 years of service effective from 01.09.2008. The applicant was granted 1st financial upgradation under the ACP Scheme in the pay scale of Rs.6500-10500/- w.e.f. 09.08.1999 attached to the post of Mate, when the applicant was working in Integrated Fisheries Project (IFP) itself. On Implementation of VI CPC, the pre-revised pay scale of Rs.5000-8000/-, Rs.5500-9000/- and Rs.6500-10500/- stood merged and was replaced with the common replacement Band (PB-2) of Rs.9300-34800/- and Grade Pay Rs.4200/-. Due to the merger of the aforesaid three pay scale consequent on implementation of 6th CPC, the 1st financial upgradation under

ACP Scheme granted to the applicant became ineffective.

5. It is further submitted that based on the above said provisions the 1st financial upgradation under ACP granted to the applicant in the pay scale of 6500-10500/- attached to the post of Mate has to be ignored. The applicant completed 20 years of regular service in the post of Bosun (C) on 16.12.2006 and accordingly he was granted 1st and 2nd financial upgradation in the Pay Band (PB-2) of Rs.9300-34800/- + GP of Rs.4600/- and 4800/- respectively w.e.f. 01.09.2008 under the MACP Scheme. The appointment of the applicant to the post of Bosun (Certified) is on regular basis only w.e.f 17.12.1986 and accordingly the applicant has completed approximately 29 years of regular service before superannuation retirement i.e. on 30.04.2015. It is elucidated that the applicant is therefore not entitled for the 3rd financial upgradation under the MACP Scheme as claimed by the applicant. An extract of Annexure A.7 at Point No.2 of DOPT O.M.No.35034/3/2008-Estt(D) dated 19th May, 2009 is reproduced as under:-

“The Government has considered the recommendations of the Sixth Central Pay Commission for introduction of MACPs and has accepted the same with further modification to grant three financial upgradations under the MACPs at intervals of 10, 20 and 30 years of continuous regular service.”

The service rendered on adhoc contract basis cannot be considered while granting promotions/upgradations as explained above and therefore the applicants claim to calculate his initial past adhoc service to determine his

.6.

eligibility for 3rd MACP cannot be reckoned as the applicant has not completed 30 years of regular service, since the appointment of the applicant was regularised only w.e.f 17.12.1986. As explained in the foregoing paragraphs, the case of the applicant for grant of financial upgradations as per his eligibility has already been finalised and forwarded. The claim of the applicant is premature and devoid of merits and therefore untenable. The basic thrust of their reply is that the adhoc service will not to be counted for the purpose of reckoning the financial upgradation under MACP Scheme.

6. Heard the Counsel for the parties at length. Perused the records. The short point raised by the applicant herein is that the applicant is entitled for grant of 3rd financial upgradation under MACP Scheme or not. On a careful examination of the order dated 21.03.1988;

1. "with reference to his letter dated the 9th March, 1988, Shri K.P.Syed Mohammed, Bosun is directed to refer to Hqs. Office order No. PF.431/Admn. dt.19-1-87 regularising his adhoc appointment as Bosun."

As per Annexure A3 order dated 23.03.1986;

"Sub: Grant of annual increment – order for.

Shri K.P.Syed Mohammed, Bosun is granted annual increment of Rs.20/- raising his pay from Rs.550/- to Rs.570/- in the scale of Rs.550-2-570-25-750 with effect from 1-2-1986."

7. Conjoined reading of these two letters states that applicant's services as adhoc Bosun has been regularised with effect from the date of his initial appointment as Bosun. Because the annual increment has been granted to

.7.

the applicant in the pay scale of Rs.550-750/-, which is not granted to an adhoc employee. The applicant has been considered and his service was regularised as if he has been appointed from his date of adhoc appointment as Bosun. Thus there is no force in the stand taken in Annexure A10, whereby his claim was rejected for 3rd financial upgradation under MACP Scheme. His services has already been regularised by the respondents themselves and it falls under the definition of 'Regular service'.

8. We are of the view that there is merit on the side of the applicant and he is entitled for 3rd financial upgradation with effect from 01.02.2015 on completion of 30 years of service after taking into consideration of regular service from the date of his initial appointment i.e. 01.02.1985.. We hold that the applicant is entitled for 3rd MACP and respondents are hereby directed to grant him 3rd financial upgradation with effect from 01.02.2015. The respondents are hereby directed to implement this order within a period of 60 days from the date of receipt of a copy of this order. The OA is allowed with no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sd

List of Annexures in O.A. No.180/00488/2015

1. **Annexure A1** – True copy of the Memorandum No.D-16/83 Adm dated 24.1.85 of the Director, CIFNET, Cochin.
2. **Annexure A2** – True copy of the order No.P.F.431/Admn dated 6.3.1985 of the Director, CIFNET Cochin.
3. **Annexure A3** – True copy of the order No.PF 292/Admn dated 23.3.1986 of the Deputy Director, CIFNET Unit, Madras.
4. **Annexure A4** – True copy of the Memorandum No.PF/292/Admn dated 21.3.1988 of the Deputy Director, CIFNET Unit, Madras.
5. **Annexure A5** – True copy of the order dated 23.06.1995 of the Director, IFP, Cochin.
6. **Annexure A6** – True copy of the order dated 15.5.2001 of the Deputy Director Integrated Fisheries Project, Cochin.
7. **Annexure A7**– True copy of MACP Scheme.
8. **Annexure A8**– True copy of the order No.F1-14/2014 E II dated 22.12.2014 of the Director General (I/C) FSI, Mumbai.
9. **Annexure A9** – True copy of the representation dated 27.3.2015 to the second respondent.
10. **Annexure A10** - True copy of the order No.F-4/2014/E II dated 1.5.2015 of the 4th respondent.
11. **Annexure A11** - True copy of the order dated 28.04.2011 in OA No.105/2010 of the Madras Bench of this Hon'ble Tribunal.
