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**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No.180/00709/2015**

**Monday, this the 8<sup>th</sup> day of April , 2019**

**CORAM:**

<b>HON'BLE Mr.E.K.BHARAT BHUSHAN,</b>	<b>...ADMINISTRATIVE MEMBER</b>
<b>HON'BLE MR.ASHISH KALIA,</b>	<b>...JUDICIAL MEMBER</b>

Shri T.A.Sajive,  
Aged 58 years,  
S/o Antony,  
Chief Engineer Gr.I,  
Cochin Base of Fishery Survey  
of India, Cochin 682 003,  
residing at 'Thissery House',  
Malipuram (P.O) Vypin,  
Ennakulam – 622 511.

....Applicant

**(By Advocate Mr.Shafik M.A.)**

**V e r s u s**

1. Union of India,  
represented by the Secretary,  
Department of Animal husbandry,  
Dairying and Fisheries,  
Ministry of Agriculture,  
Krishi Bhavan, New Delhi.
2. The Director General,  
Fishery Survey India,  
Botawala Chambers,  
Sir P.M.Road, Mumbai – 400 001.
3. The Zonal Director,  
Fishery Survey India,  
Cochin – 682 005.

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4. The Zonal Director,  
Fishery Survey India,  
Vishakapatnam – 530 001.

.....Respondents

**(By Mr. P.G.Jayan, ACGSC for Respondents)**

This application having been heard on 4<sup>th</sup> April, 2019, the Tribunal on 8<sup>th</sup> April, 2019 delivered the following :

**ORDER**

**HON'BLE MR.E.K.BHARAT BHUSHAN, ....ADMINISTRATIVE MEMBER\_**

OA No.709/2015 is filed by Shri T.A.Sajive, aggrieved by the denial of increments in the scale of pay of the post of Chief Engineer Grade-II for the period he worked as Chief Engineer Grade-I from 1987 to 1997 without a break. The relief sought in the OA are as follows:

- (i) To call for the records relating to Annexure A-1 to A-18 and to quash Annexure A-1 being illegal, arbitrary and against the provisions of law.
- (ii) To declare that the applicant is entitled for increments in the scale of pay of Chief Engineer Grade I, for the period from 1987 to 1997 as per FR 26 and is entitled to reckon the same for fixation of pay on regular promotion as Chief Engineer Grade I.
- (iii) To direct the Respondents to reckon the increments of the period which he has worked against the post of Chief Engineer Grade I, for fixing his pay on regular promotion. As such with effect from the due date with all consequential benefits and to revise the pay accordingly and to draw arrears with 18% penal interest.
- (iv) To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case.

And

- (v) To grant the costs of this Original Application.

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2. The applicant joined the service of Respondents in the year 1986 and reported for duty in Fishery Survey of India (FSI) on 7.3.1986 as Chief Engineer Grade-II on regular basis. He worked as Chief Engineer Grade I on adhoc basis in the scale of pay of Rs.3000-4500 on two occasions from 5.5.1986 to 26.6.1986 and 3.11.1986 to 28.11.1986. Subsequently he was appointed as Chief Engineer Grade-I on continuous basis from 8.5.1987 to 4.11.1997. The applicant was selected as Chief Engineer Grade-II through the UPSC in Integrated Fisheries Project (IFP) and worked therein from 6.11.1997. He reported back in FSI in 2006 as per re-organisation of the department. Finally he was promoted as Chief Engineer Grade-I on regular basis in the scale of pay of Rs.10000-15200 w.e.f. 01.05.2008. No promotional benefits through fixation of pay accrued to him as he had already been granted 1<sup>st</sup> ACP benefit in the same pay scale during 2000.

3. The contention raised by the applicant in the OA is regarding his entitlement for protection of pay with increments for the period he worked in the higher post, earlier to the regular posting as Chief Engineer Grade-I. He submits that as per the provisions of FR 22(1) he is entitled to 11 annual increments in the higher scale. He filed a representation as at Annexure A2 and no reply was forthcoming and thereafter obtained information as at Annexure A4 through RTI. This revealed to him that he is eligible for increments calculated in terms of Rule 13 of CCS (RP) Rules, 2008. Further representations were filed as at Annexure A5 and A6, but these were also to

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no avail. A consolidated representation was made to the first Respondent on 3.10.2013, a copy of which is available at Annexure A8.

4. On receipt of Annexure A8 representation, the 2<sup>nd</sup> Respondent sought comments on the same from the 4<sup>th</sup> Respondent and the latter provided the comments as at Annexure A10, strongly recommending the applicant's case. The thrust of the recommendation was that since the applicant had attended to the higher duties for 10 years and 2 months, he is entitled for increments in the higher scale.

5. He received Annexure A1 order issued by the 4<sup>th</sup> Respondent rejecting his claim on the ground that he is entitled only for one time increment as per Ministry of Finance OM No.10/02/2011 E-II A, dated 19.03.2012, which has already been granted to him. But this reply ignores the fact that the one increment, that is referred to, had been granted to all employees, due to the change in the yearly increment date as 1<sup>st</sup> July every year. Aggrieved by the inaction on the part of the respondents, the applicant has chosen to file this OA.

6. As grounds, he points out that the reply to the effect that he has already been granted increments for 10 years is arbitrary and result of non application of mind. He had attended to higher nature of duties during the said period. He worked continuously during the period until his promotion

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on regular basis as Chief Engineer Grade-I, but owing to the fact that he was already on a higher scale he was not granted any financial benefits. As per FR 22 he is eligible for 11 increments on the higher scale as recommended by Respondent-4 as per Annexure A10.

7. The respondents have filed a reply statement disputing the claim raised by the applicant. The facts relating to his service are admitted. It is stated that while the applicant was officiating in the post of Chief Engineer Grade-I, he was granted pay in the respective scale of Rs.3000-4500. However, the officiating pay was restricted as per FR 35, as the promotion had not been on regular basis. It is mandated thus as per DOPT OM at Annexure R1. It is also averred that having joined as Chief Engineer Grade-II in 1986, he was eligible for regular promotion only from 1993 as per Annexure R2, which lays down that the required eligibility for promotion is 7 years regular service in the grade. The applicant was repatriated to FSI from deputation on 14.01.1994 and his pay was fixed at the minimum of Rs.3000 under FR(1)(a)(1) with effect from 15.01.1994. The position with regard to the applicant is made clear in the reply statement that while drawing the pay under FR(1)(a)(1), no increment accruing in that post was eligible to him and increment that he received was in the feeder post of Chief Engineer Grade-II.

8. Shri Shafik was heard on behalf of the applicant and Shri P.G.Jayan, learned ACGSC on behalf of the respondents. The applicant had been inducted as Chief Engineer Grade-II on 7.3.1986. Apart from two short

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spells, the applicant was officiating as Chief Engineer Grade-I on adhoc basis from 8.5.1987 to 4.11.1997. While working in the higher post on officiating basis, he drew his pay on the scale of the higher post i.e., Rs.3000-4500, but he was allowed only increments of the scale entitled to the feeder post of Chief Engineer Grade-II.

9. FR 22(1) that both sides refer to reads as follows:

“Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or [rupees one hundred only], whichever is more.”

10. The applicant had repeatedly represented his case citing Rule 9 and 13 of CCS (RP) Rules, 2008, but these were not accepted by the respondents. They took the stand that restriction under FR 35 quoted below is applicable in the case.

*“The Central Government may fix the pay of an officiating Government servant at an amount less than that admissible under the Rules.”*

The learned Counsel for the applicant stated that the restriction under FR 35 are not to apply in a case where, *“a Government servant holding the post in*

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*substantive or temporary or officiating capacity is promoted or appointed in substantive or temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant recruitment rules, to another post carrying duties and responsibilities of greater importance.”*

11. Clearly the applicant in this case had been asked to work at a level which carried with it higher responsibilities. This implies that the restriction which has been referred to by the respondents in the reply statement does not apply in this case. The only other point to be considered is the date when the applicant acquired the 7 years experience in the feeder cadre of Chief Engineer Grade II to be eligible for promotion as Chief Engineer Grade-I. This seems to have been acquired when he completed 7 years in the lower post which was on 6.3.1993. The respondents raised a contention that he performed the role of Chief Engineer Grade-I in officiating capacity “with intermittent breaks”. This assertion is not supported by the evidence on record.

12. After due consideration of the case, we allow the prayer to the extent of declaring that he is eligible for increments relating to the pay scale of Chief Engineer Grade-I from the period he acquired the necessary eligibility (7 years from the date of entry into service) till he was regularly promoted as Chief Engineer Grade-I, which was on 01.05.2008. The OA stand allowed to

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the extent indicated above. Order as per direction above are to be issued within 30 days of receipt of the copy of this order. No costs.

**(ASHISH KALIA)**  
**JUDICIAL MEMBER**

**(E.K.BHARAT BHUSHAN)**  
**ADMINISTRATIVE MEMBER**

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**List of Annexures in O.A. No.180/00709/2015**

1. **Annexure A1** – True copy of the Memo No.F.No.04-35/2014-Estt dated 19.12.2014 issued by the 4<sup>th</sup> Respondent.
2. **Annexure A2** - True copy of the Representation dated 3.10.2011 submitted by the Applicant.
3. **Annexure A3** - True copy of the RTI request dated 24.10.2011 submitted before DOPT.
4. **Annexure A4** - True copy of letter No.20/1/2011 Estt (Pay-1) dated 9.11.2011 issued by the DOPT.
5. **Annexure A5** - True copy of the representation dated 8.6.2012 submitted by the Applicant.
6. **Annexure A6** - True copy of the Letter F.No.1.1.2008-IC dated 29.1.2009 issued by the Ministry of Finance.
7. **Annexure A7** - True copy of the Representation dated 31.7.2012 submitted to the 2<sup>nd</sup> respondent.
8. **Annexure A8** - True copy of the Representation dated 3.10.2012 submitted to the 1<sup>st</sup> respondent.
9. **Annexure A9** - True copy of the letter F.No.2-10/2004-E.I dated 20.12.2013 of the 2<sup>nd</sup> Respondent.
10. **Annexure A10** - True copy of the letter No.F.4-35/2014-Estt dated 24.1.2014 of the 4<sup>th</sup> Respondent.
11. **Annexure A11** - True copy of the RTI request dated 01.04.2014 to the office of the 2<sup>nd</sup> respondent.
12. **Annexure A12** - True copy of the letter F.2-10/2014.Estt dated 16.5.2014 of the Office of the 4<sup>th</sup> Respondent.
13. **Annexure A13** - True copy of the order F.13-4/2012 E-1 dated 22.08.2014 of the 2<sup>nd</sup> Respondent.
14. **Annexure A14** - True copy of the Representation dated 30.09.2014 submitted before the President of India.

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15. **Annexure A15** - True copy of the OM No.10/02/2011 E-11 A dated 19.3.2012 issued by the Ministry of Finance.
  16. **Annexure A16** - True copy of the Representation dated 8.1.2015 submitted to the 2<sup>nd</sup> Respondent.
  17. **Annexure A17** - True copy of the OM No.19/2/2013-Estt.(Pay-I) dated 12.12.2013 issued by the Department of Personnel & Training.
  18. **Annexure R1** - True copy of the order OM No.1/10/89-Estt(Pay-I) dated 22.10.1990.
  19. **Annexure R2** - True copy of the Recruitment Rules for the post of Chief Engineer Gr.I.
  20. **Annexure R3** - True abstract of the F.R. 35.
  21. **Annexure R4** - True copy of the office Order No.63/2006 dated 19.8.2006.
  22. **Annexure R5** - True copy of the Office Memorandum F.No.1/1/2008-IC dated 29.1.2009.
  23. **Annexure R6** - True copy of the Office Memorandum F.No.1/1/2008-IC dated 13.09.2008.
  24. **Annexure R7** - True abstract of para 4.1 of Appendix 5 of the SWAMY's Fundamental Rules.
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