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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00863/2015

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**

V.S.Joseph,
S/o.Sebastian.V.A.,
Retired Carpenter (CIFNET),
Valiyaparambil House, Water Land Road,
Palluruthy, Kochi – 682 006.

...Applicant

(By Advocates Mr.P.K.George & Mrs.Smitha George)

v e r s u s

1. Union of India represented by its Secretary to Government,
Ministry of Agriculture, Department of Animal Husbandry,
Dairying and Fisheries, New Delhi – 110 066.
2. The Pay and Accounts Officer,
Central Pension Accounting Office,
Ministry of Finance, Govt. of India,
Trikoot II Complex, Bhikaji Cama Place,
New Delhi – 110 066.
3. The Director,
Central Institute of Fisheries
Nautical & Engineering Training (CIFNET),
Kochi – 682 016.
4. Senior Administrative Officer,
Central Institute of Fisheries
Nautical & Engineering Training (CIFNET),
Cochin, Fine Arts Avenue, Foreshore Road,
Kochi – 682 016.

...Respondents

(By Mr.N.Anil Kumar, SCGSC for Respondents)

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This application having been heard on 24th January, 2019 the Tribunal on 4th February, 2019 delivered the following :

ORDER

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

OA No.863/2015 is filed by V.S.Joseph, retired employee of CIFNET, Kochi against the denial of second ACP due with effect from 30.01.2008. The reliefs sought in the OA are as follows:

- i) Call for the records leading up to the Annexure A5 and quash the same.
- ii) To direct the respondents to count the applicant's service rendered on adhoc basis as regular service for the purpose of ACP Scheme and pensionary benefits;
- iii) To declare that the Applicant is entitled to be granted 2nd level financial upgradation under the ACP Scheme with effect from January, 2008.
- iv) To direct the Respondents to take appropriate action to grant the 2nd financial upgradation under the ACP Scheme to the Applicant with effect from January, 2008 and to direct the respondents to disburse the arrears (all consequential arrears of pay and allowances arising therefrom) with interest at the rate of 18% immediately in the interest of justice.
- v) Issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The applicant joined respondents, CIFNET after his name was referred to the respondents by the Employment Exchange. He joined CIFNET on 15.12.1975 after a test and interview for the post of Carpenter on casual basis. As per office order No.F.13-18/83-Adm. Dated 20.01.1984, he was

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posted on adhoc basis as Carpenter with effect from 13.01.1984. The copy of the said office order is at Annexure A2. The applicant was declared to have completed his probation on 06.11.1987 and continued in service. He superannuated on 31.10.2008. He was the beneficiary of first level financial upgradation under ACP, granted after completion of 12 years of regular service. Being due for second level financial upgradation after completion 24 years of regular service, the applicant requested for the same by letter dated 20.06.2014 (Annexure A4).

3. The 4th respondent vide communication dated 25.09.2014 rejected the applicant's claim for second level financial upgradation on the ground that he had not completed 24 years of service (Annexure A5). It is stated therein that the applicant was employed on adhoc basis with effect from 13.01.1984 and regularised on 07.11.1985 only. Thus on retirement his regular service did not extend to 24 years.

4. The applicant makes out a case that he had been continuously employed from 15.12.1975. As per a certificate detailing qualifying service as required under Rule 32 of the CCS (Pension) Rules, 1972, the 4th respondent as on 31.03.2003 had certified that the applicant had completed 23 years 3 months and 3 days service (Annexure A6). Thus the denial of applicant's claim for second level financial upgradation under ACP Scheme is arbitrary and unjustified. His adhoc service from 13.01.1984 is to be included

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as qualifying service while assessing his eligibility for ACP. The 4th respondent was wrong in refusing him the benefit. The applicant had completed the qualifying service of 28 years and 7 months at the time of retirement, if we take the service in Annexure A6 into account.

5. The Madras Bench of Central Administrative Tribunal in OA No.105/2010 had ruled that if a person possesses required qualification for being appointed to a particular post and is appointed with the approval and consultation of appropriate authority, such appointment cannot be held to be adhoc and the Tribunal had ordered for grant of benefits under ACP Scheme. The Tribunal had arrived at such a finding on the basis of the judgments delivered to this effect by the Hon'ble Apex Court in **Rudra Kumar Sain and Ors v. UOI and Ors.** Reported in **2001 SLJ 1**. Further in the judgment in W.P.No.5876/2008 a Division Bench of the Hon'ble High Court had also held the view that service rendered on adhoc is also to be counted for the purpose of granting ACP Scheme. Further, Principal Bench of the Central Administrative Tribunal in order dated 27.01.2012 in OA No.3184/2010, had held a similar line.

6. The respondents have filed a reply statement stating that the applicant had been appointed purely on adhoc basis with effect from 31.01.1984 and was regularised on 07.11.1985. He went on to complete his probation on 20.10.1987. According to the ACP Scheme casual employees, adhoc and

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contract employees would not qualify under ACP Scheme and only regular service is to be reckoned for granting financial upgradation. It is in the light of this interpretation that the case of the applicant was rejected.

7. Heard Ms.Smitha George, learned Counsel for the applicant and learned counsel appearing on behalf of the respondents. The issue at hand is whether the service rendered on adhoc basis prior to regularisation is also to be taken into account while assessing the eligibility of an employee for granting financial upgradation. In the case of the applicant if this period is excluded he would fall short of the benefit as he retired on 31.10.2008. This question has been clearly addressed in the orders referred to in the OA itself. During arguments, orders of this Bench itself in **C.Sreekumar Vs. Union of India and others** in OA No.478/2014 dated 11.11.2016 was brought to our attention, wherein a similar stand had been taken. Facts being so, we have no hesitation in allowing the OA. All reliefs prayed for will be granted and consequential benefits other than interest claimed would be disbursed to the applicant within three months of receipt of a copy of this order. OA is disposed of. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00863/2015

1. **Annexure A1** – True copy of the memo dated 29.11.1975.
2. **Annexure A2** – True copy of the office order No.F.13-18/83 Adm dated 20.01.1984.
3. **Annexure A3** – True copy of the office order No,.F.1-14/87 Adm dated 23.12.1987.
4. **Annexure A4** – True copy of the request letter for the grant of 2nd level financial up-gradation under the ACP Scheme dated 20.06.2014.
5. **Annexure A5** – True copy of the communication No.PF.203/Adm/677 dated 25.09.2014.
6. **Annexure A6** – True copy of the certificate dated 2.12.2003 regarding the details of qualifying service of the applicant issued by the then 4th respondent.
7. **Annexure R1(a)**– True copy of DOPT O.M No.35034/1/97-Estt(D) dated 09.08.1999.
8. **Annexure R1(b)** – True copy of the relevant portion of the DOPT OM No.35034/1/97-Estt(D) (Vol-IV) dated 10.02.2000.
