

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00223/2016

Monday, this the 18th day of February, 2019

CORAM:

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

Shri V.K.Vasu,
Aged 64 years,
S/o Kunjan,
Storekeeper, (retired),
NAD, Aluva,
Residing at 'Muthirakattumukal House',
NAD PO, Edathala, Aluva,
Kochi – 683 563.

....Applicant

(By Advocate Mr. Shafik M.A.)

Versus

1. Union of India,
Represented by
Director General of Naval Armament,
Integrated Headquarters,
Ministry of Defence (Navy),
NEW DELHI – 110 011.
2. The Flag Officer Commanding-In-Chief,
Southern Naval Command,
Naval Base, Kochi – 682 004.
3. The Chief General Manager,
Naval Armament Depot,
Aluva – 683 563.

(By Advocate Mr. N.Anilkumar, Sr.CGSC for Respondents-1to3)

This application having been heard on 7th February, 2019, the Tribunal on 18th February, 2019 delivered the following :

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ORDER

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

OA No. 180/223/2016 is filed by Shri V.K. Vasu retired Storekeeper, NAD, Aluva aggrieved by the letter dated 5.10.2015 copy of which is available at Annexure A1, issued on behalf of the 2nd respondent refusing to reckon his Combatant service prior to his re-employment for the purposes of all service benefits including seniority. This communication was followed by another dated 25.5.2015 at Annexure A2 issued by the Commander, JDCP(Pay) on behalf of the 1st respondent directing the 2nd respondent to reckon his service after re-deployment only for granting him the benefits of ACP/MACP. The true copy of 2nd letter is at Annexure A2.

2. The relief sought in the OA are as follows:

“(I) To call for the records relating to Annexure A-1 to A-10 and to quash A-1 and A-2 being illegal and arbitrary and against the law and the orders of this Hon'ble Tribunal;

(II) To declare that the applicant is entitled to reckon his military combatant service for the purpose of seniority and all other benefits like ACP/MACP upgradations;

(III) To direct the respondents to reckon his service with effect from 1974 for the purposes of seniority, ACP/MACP benefits and to direct the respondents to revise the seniority of Storekeepers accordingly and to grant all benefits including functional promotions and to revise his pay and consequential pension accordingly;

(IV) To issue such other appropriate orders or directions this Honorable 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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3. The applicant retired as a Storekeeper in NAD Aluva under the 3rd respondent on 31.5.2012 on attaining the age of superannuation. He had served as a Combatant Storekeeper in Army for ten years from 15.1.1974 to 1.4.1984 before his employment with NAD as Post Military service. He was discharged on compassionate grounds from the Army and was not eligible for military pension. He was reemployed in Southern Naval Command as casual Assistant Storekeeper from 11.8.1987. His service was regularized and transferred to NAD, Aluva on 16.12.1992. As per rules existing at that time i.e. Sub Para 2 and 3 of Paragraph 16 of Central Civil Service (Fixation of Pay of Re-employed Pensioners) Orders, 1986, the military service rendered is entitled to be reckoned for fixing the pay in the re-employed post as also for purposes of fixing seniority. The applicant filed a representation to the 3rd respondent on 25.5.1993 claiming the above benefit (Annexure A3). Consequently his initial pay was fixed reckoning ten years of Combatant service for increment as per orders of NAD, copy of which is at Annexure A4.

4. As per Annexure A3 representation the applicant had pointed out that he is eligible for seniority in accordance with MOD memorandum dated 4.12.1959 as promulgated in Naval order (CIV) 4/73. Subsequently MOD as per memorandum No. 10(1) 63/6039/D-Appts., dated 1.6.1963 had further clarified that persons who are employed in clerical duties in combatant posts and are reemployed in civil post under this Ministry in clerical capacity had to be given benefit of their combatant service for seniority in the civil post

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irrespective of the rate of pay drawn by them in the combatant post. The respondents replied to this stating that these memoranda are old and could not be traced out (Annexure A5).

5. In the meanwhile the 3rd respondent informed that his request for counting his military service for the purpose of ACP/MACP cannot be agreed to on the ground that regular service for the purpose of MACP shall continue from the date of joining of a post in direct entry grade. In so far as ACP was concerned it was maintained that ex-servicemen reemployed as civil employee shall be entitled for upgradation under the scheme on completion of 12/24 years of service after direct recruitment in the civil employment, (Annexure A6). The applicant had pursued the issue and had managed to obtain a true copy of the Navy order marked at Annexure A7. The applicant made a comprehensive representation to the authorities (Annexure A8). The said representation has not been responded to so far.

6. The applicant was of the bonafide belief that his request would be acceded to as one OA filed for a similar relief before the Principal Bench as OA 1445/2010 was allowed by the Tribunal by order dated 4.3.2011. The applicant approached the respondents as per RTI request for the file notings and clarifications of the DOPT. From the true copy of the attached file notings produced as Annexure A10 it is seen that the interpretation used to reject his case on the point of doubt No. 13 of the OM dated 10.2.2000 on ACP scheme

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is not applicable to the applicant as he is not drawing any military pension at all. In spite of this fact, the request of the applicant based on Annexure A7 was being rejected mechanically.

7. The respondents have filed a reply statement wherein they have disputed the contentions of the applicant made in the OA. It is maintained that the benefits due under CCS (Pension) Rules, 1972 [Rule 19] are not admissible to service personnel who are discharged at their own request without completion of minimum service to earn military pension. Further the respondents also quoted the DOPT OM No. 35034/3/2008-Estt (D), dated 19th May, 2009 details the MACP scheme particulars wherein it is stated at paragraph 9 "Regular service for the purpose of MACP shall commence from the date of joining of post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis." The details of the DOPT OM relating to ACP scheme is also quoted and is produced as Annexure R4.

8. Shri Shafik learned counsel for the applicant and the Standing Counsel for the respondents were heard and all pleadings examined.

9. It is seen that the very same issue had been considered by the Principal Bench in OA No. 1445/2010 wherein it has been declared as below:

"9. Thus, the applicants services shall be counted from 18.3.1982 onwards

for the purpose of ACP as well. However, when the past services are counted, corresponding promotions granted to the applicant during his military service cannot be lost sight of. The same shall also be taken into consideration while working out the eligibility/entitlement of the applicant for grant of ACP benefits. In that event, the applicant having got one promotion as Corporal, he may be entitled to grant of second ACP under the ACP Scheme or second and third ACP under the MACP Scheme. 24 years calculated from the initial date of employment would be w.e.f. 18.3.2006 only. However, this may not be beneficial to the applicant, as the respondents are prepared to grant the first ACP fixing his pay scale of Rs.7500-12000 from 28.11.2003 itself. Perhaps the applicant would be benefited of the military service if he is eligible for MACP in which event his second ACP would be from 2002 and third ACP would fall due in 2013. The scheme of ACP being a beneficial measure, the one which is the most advantageous should be made available to the applicant.”

Further in the judgment of the Karnataka High Court in ***T.P. Thomas v. Union of India & Ors.*** Dated 31st January, 1977 the MOD memos have been quoted which appears to settle the issue once and for all. In MOD letter 13034/D (Appts.), dated 4.12.1959 reads as follows:

“In amplification of the provision of the provision of AI 241/50 and corresponding orders on the Air Force and Navy sides, it has been decided in consultation with the Ministry of Home Affairs that in determining seniority of Government Servants on appointment in civil posts, benefit of all previous service rendered in the same or equivalent posts (including service rendered in combatant capacity) should be given and for this purpose the posts should be treated as equivalent if the nature and duties attached to them are similar, irrespective of the rate of pay drawn in the previous posts.”

MOD memo No. 10(1)63/6039/D(Appts.), dated 1.6.1963 reads as follows:

“In clarification of the provisions of the Ministry's No. 13034/D(Appts.) dt. 4th December, 1959 on the above, it has decided that persons, who were employed in clerical duties in combatant posts and may be re-employed in civil posts under this Ministry in clerical capacity may be given benefit of their combatant services for seniority in the civil post irrespective of the rates of pay drawn by them in combatant posts.

The formula of equivalence of duties, is, however, not to be applied in the case of ex-servicemen re-employed as LDCs or in the grades who had rendered service in posts/grades other than clerical. These orders will not have any retrospective effect and promotion/confirmation already made will not be disturbed.”

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10. The respondents appear to have taken a view that interpretation of the scheme *per se* would preclude the issue of seniority and eligibility for ACP/MACP. We discern some element of clarity in Annexure A10 in the file notings of the Department wherein it is stated as follows:

“(a) Hon'ble CAT Delhi in a similar case (OA No. 1445/2010) has held that applicant's case would have been construed to fall within the category mentioned in point of doubt No. 13 of DoPT OM dated 10 Feb 2010 provided he was drawing military pension. Since the applicant has not been drawing any military pension, the said point of doubt No. 13 would not apply to him. In that, applicant's service in Armed Forces shall be counted for the purpose of ACP as well. A copy of verdict is placed at Encl. 3A.

(b) The case of Shri VK Vasu is similar to the above case. He is also not drawing Military Pension. As a result, his former military service can be counted for the purpose of ACP/MACP and pensionary benefits.”

11. There appears to be no ambiguity in the present case. The applicant is entitled to the benefit as claimed. The OA succeeds. The consequential benefits are to be made available to the applicant within three months of the receipt of a 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.180/00223/2016

1. **Annexure A1** – True copy of the letter No.CS 2730/11/NAD dated 05.10.2015 issued on behalf of the 2nd Respondent.
 2. **Annexure A2** – True copy of the letter No.CP(P)/7837/ACP/Ex-S'Man dated 25.08.2015 issued on behalf of the 1st Respondent.
 3. **Annexure A3** – True copy of the Representation dated 25.05.1993 to the 3rd Respondent.
 4. **Annexure A4** – True copy of the Civilian Establishment List No.75/98 dated 12.08.1998 of Naval Armament Depot, Aluva.
 5. **Annexure A5** – True copy of the letter No.22(25)/RTI/II/D(Apptts.) dated 26.07.2011 of the Ministry of Defence.
 6. **Annexure A6** – True copy of the letter No.CS/2760/2 dated 08.08.2011 of the 3rd respondent.
 7. **Annexure A7** - True copy of the Navy Order (CIV) 4/73.
 8. **Annexure A8** - True copy of the Representation dated 24.09.2013 submitted before the 2nd Respondent.
 9. **Annexure A9** - True copy of the letter No.PIO/130/15/VKV/9(11) dated 14.10.2015 of the CPIO of NHQ.
 10. **Annexure A10**- True copy of the letter No.DL/0812/1011 dated 03.11.2015 Cdr-At-arms of the Integrated Headquarters, Navy.
 11. **Annexure R1** - Copy of HQSNC Memorandum dated 27 Nov 84.
 12. **Annexure R2** - Copy of DOPT OM dated 19 May 2009.
 13. **Annexure R3** – Copy of DOPT OM dated 9th Sep 2010.
 14. **Annexure R4** – Copy of DOPT OM dated 29 Jun 2004.
 15. **Annexure R5** – Copy of NAD (A) letter dated 28 Dec 15.
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