

**Central Administrative Tribunal
Ernakulam Bench**

OA No.180/01123/2014

Monday, this the 24th day of December, 2018

C O R A M

**Hon'ble Mr. E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member**

V. Prakasan, aged 61 years
S/o Late P. Gopalan
Asst. Engineer (Civil) (Retd)
Vaniyathur House, Kakkodi Post
Kozhikode-673 611.

Applicant

[Advocate: Mrs. Sumathi Dandapani]

versus

1. Union of India represented by
Secretary, Ministry of Shipping
Transport Bhavan, New Delhi-110 001.
2. The Pay and Accounts Officer
Office of the Principal Chief Controller of Accounts
Internal Audit Wing, L.D.A. Building
Jam Nagar House, Shahjahan Road
New Delhi-110 011
3. The Chief Engineer & Administrator
Andaman Lakshadweep Harbour Works
Port Blair-744 101.
4. The Deputy Chief Engineer
Andaman Lakshadweep Harbour Works
Union Territory of Lakshadweep
Kavaratti-682 555.

Respondents

[Advocate: Mr.Thomas Mathew Nellimoottil, Sr.PCGC]

This OA having been heard on 18th December, 2018, the Tribunal delivered the following order on 24th December, 2018:

ORDER**By Ashish Kalia, Judicial Member**

The applicant joined the post of temporary Overseer (Civil) in the then pay scale of 330-560 on 6.10.1976. On his selection as a direct recruit, the applicant joined the post of Engineering Assistant on 22.11.1979 in the pay scale of Rs.425-700. On completion of 5 years' service as Engineering Assistant, the applicant, along with certain other Engineering Assistants, was placed on a personal basis in the pay scale of Rs.1660-2660 w.e.f. 1.1.1986. By an office order marked as Annexure A5, the designation 'Engineering Assistant' was rechristened as Junior Engineer in the pay scale of Rs.1400-2300. The applicant was promoted to the post of Inspector of Works in the pay scale of Rs.1600-2660 w.e.f. 31.3.1994 as per Annexure A6. On completion of combined services as Engineering Assistant and Inspector of Works, the applicant's pay scale was upgraded to Rs.2000-3500 effective from 22.11.1995. As per Annexure A8, the benefit of Time Bound Placement was made available to the applicant in the scale of Rs.6500-10500. On the recommendation of the 5th CPC, the post of Overseer in the pre-revised pay scale of Rs.1200-2040 stood merged with that of Junior Engineer in the pay scale of Rs.1400-2300 and the post of Junior Engineer was placed in the revised pay scale of Rs.5000-8000 w.e.f. 1.1.1996 (Annexure A9). In addition to the above merger, the respondents contemplated the merger of Inspector of works with Junior Engineer and in this regard, acceptance was called for from the applicant. The applicant gave his acceptance. As per the conditions attached to the merger, his pay was protected. The applicant was promoted to the post of Assistant Engineer in the pay scale of Rs.6500-10500 as per Annexure A11. The 4th respondent granted first ACP to the applicant w.e.f.

9.8.1999 in the pay scale of Rs.6500-10500. According to the applicant, he was already drawing this pay scale. On completion of 24 years of service reckoned from 22.11.1979 (the date of his direct recruitment as Engineering Assistant, later renamed as Junior Engineer), on 22.11.2003, the respondents afforded the second financial upgradation. On implementation of 6th CPC, the applicant sought 3rd MACP on completion of 30 years service

2. The Applicant was due for superannuation in April, 2014 and as such, well in advance, the process of pension papers was to commence. In that process, the second respondent had issued a communication No. PAO/ALHW/Pension/2013/1406-07 dated 10/12-02-2014 giving details of various promotions/time bound financial upgradations. The applicant submitted a representation dated 21.3.2014 in which he had contended that similarly situated persons had already been granted the ACP benefit and in none of the cases, such withdrawal order of ACP had been passed. The applicant has cited as many as 18 names and specifically two names – Sri T.P.Sayed Mohammed and Sri R.Subramaniam for comparison. The aforesaid representation of the applicant was rejected by the respondents. Left with no alternative, he has approached this Tribunal.

3. Notices were issued to the respondents, upon which a detailed reply statement has been filed. Though the factual position narrated in reply to para 4 (2) to 4(10) has been admitted, the respondents have denied the averment in para 4(11) of the OA that in addition to merger of Overseers with Junior Engineer, the respondents had contemplated merger of Inspector of Works with Junior Engineer vide communication dated 9.5.2003 and in this regard, acceptance was called for from the applicant, and he gave his acceptance subject to the

undertaking mentioned as per Annexure A10 and as per the one of the conditions attached to the merger, his pay earlier drawn in the post of Inspector of Works was protected. While scrutinizing the pension papers and service book, the PAO, ALHW, New Delhi observed the following remarks as below:-

"He was given 1st ACP in the scale of Rs 6500-10500 w.e.f. 09-08-1999 which is not correct as he was already given promotion as Inspector of Works vide Office Order No. 35034/1/97-Estt dated 09-08-1999). The 2nd ACP was given (vide Office Order No. A-26020/1/2006-PE-II dated 15.09.2008) in the scale of 10000-325-25200 w.e.f. 06.10.2000 which is also not correct. The post of Inspector (Works) was merged with the post of Junior Engineer w.e.f. 12/10/2007 vide File No. A-12023/1/2004/PE II dated 12/10/2007. In this order it is not mentioned that from which date the order will be effective. In absence of this, the order will be effective from the date of issue of the order, i.e. 12/10/2007. Hence, Shri V. Prakasan, Assistant Engineer (C) is entitled to 2nd ACP in the scale of Rs 10000-325-15200 w.e.f. 12-10-2007 i.e., from the date of issue of the order.

It is therefore, requested that the pay may be reused accordingly before resubmission of pension papers. All such cases may also be reviewed accordingly. In case of any doubt the case may be referred to DOPT for further clarification".

It is submitted that the grading in the ACR of the applicant for the year 2004-05 and 2006-07 had been reviewed by the Reviewing Authority and the representation of the applicant dated 21.1.2015 was rejected as per Annexure A37. Thus the applicant is not entitled for any of the reliefs sought in the OA. The respondents have thus prayed for dismissal of the OA.

4. Rejoinder to the reply has been filed by the applicant almost reiterating the contentions taken in the OA. Respondents filed an additional reply as well.

5. It is further submitted that the contention that the first ACP was given to the applicant in pay scale of Rs.6500-10500 w.e.f. 9.8.1999 is not correct, as he had already got promotion as Inspector of Works on 9.8.1999. That the second ACP was given to the applicant w.e.f. 13.9.2008 in the scale of Rs. 10,000-25200 w.e.f. 6.10.2000 is not correct. The post of Inspector of Works had merged with the post of Junior Engineer w.e.f. 12.10.2007. Thus the applicant is entitled for

2nd ACP in pay scale Rs. 10000/- - 25200/- w.e.f. 12.10.2007 from the date of issuance of the order.

6. Heard learned counsel for the parties at length and perused the pleadings and records. First the applicant has raised the issue that the department cannot recover money in view of the first ACP. According to the applicant, the ACP was given to him w.e.f. 25.8.1999 as he had got promotion to the post of Inspector of Works on 31st March, 1994. Thus, after adding 12 years from 1994, he is entitled for first ACP. In this regard, we are in agreement with the stand taken by the respondents that the ACP is given on account of stagnation in a particular grade, which is not the case here. The applicant got promotion to the next higher scale w.e.f. 31st March, 1994. Thus he is not entitled for first ACP w.e.f. 7.8.1999. The 2nd ACP is due and payable to the applicant 12 years thereafter. The department has given the second ACP correctly w.e.f. 12.10.2007 in pay scale of Rs.10000-25200. On this count, we are of the view that nothing is found wrong in the action of the respondents in not granting first ACP and second ACP with effect from 12.10.2007. The applicant was not given MACP on completion of 30 years of service as envisaged by the 6th CPC on condition of 10, 20 and 30 years. In this regard, the department has categorically submitted that the applicant's ACRs were not upto the mark. The Bench mark for the same was "very good", whereas for his ACR for the period 2005-06 and 2006-07, his assessment was "good" only. Thus the department has denied the same. The Senior Advocate has drawn our attention to page No.102 which is ACR for 2006-07. The signature of the Accepting Authority is not there in Annexure A34. The Reviewing Officer and the Reporting Officer is one and the same, Mr.Bimal Sinha and it is accepted by the Accepting Authority, Chief Engineer

(Administration) as “good”. It is a serious anomaly. The Reporting Officer and the Reviewing Officer should have been different. Learned counsel for the applicant further submitted that this was never communicated to the applicant. In this regard, , this Tribunal is of the view that in case the grade awarded to the applicant is below the remarks earlier given, then it is all the more necessary to communicate the same to the concerned officer. Thus on this count, this ACR has to be ignored. As regards ACR for 2006-07, it was pointed that the Reporting Officer had given “very good” and the Reviewing Authority had reduced it to “good” only. The same has also not been communicated to the applicant. In this regard, Mrs. Sumathi Dandapani has relied upon the judgment of the Hon'ble Supreme Court in ***Sukhdev Singh vs. Union of India and Ors.***, in Civil Appeal No.5892 of 2006, the relevant portion of which is reproduced hereunder:

.....*In our opinion, every entry in the ACR of a public servant must be communicated to him within a reasonable period whether it is poor, fair, average, good or very good entry. This is what this Court held in paragraphs 17 & 18 of the report in Dev Dutt (2008) 8 SCC 725 a page 733:*

In our opinion, every entry in the A.C.R. of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways: (1) Had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future (2) He would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi v. Union of India (supra) that arbitrariness violates Article 14 of the Constitution, Thus it is not only when there is a benchmark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder.”

7. In view of the aforesaid dictum, this Tribunal is of the view that since these 2 ACRs were never communicated in which grading was reduced, that should not be taken into account and the applicant should be suitably assessed taking into account his previous ACRs. In case he is found fit, he should be considered for grant of 3rd MACP. In view of this, we direct the respondents to constitute a review DPC taking into consideration the directions given herein above, within a period of 90 days. Of the receipt of this order. The OA is disposed of with no order as to costs.

(Ashish Kalia)
Judicial Member

(E.K.Bharat Bhushan)
Administrative Member

aa.

Annexures filed by the applicant:

Annexure A1: Copy of the Office Order No.210/76 dated 21st October, 1976.

Annexure A2: Copy of the Office Order No.168/5809 dated 30.8.1979.

Annexure A3: Copy of the Memorandum No.LHW/1026/7407 dated 21.11.1979.

Annexure A4: Copy of the Office Order No.706/93 dated 20th August, 1993.

Annexure A5: Copy of the Office Order No.403/94 dated 28.3.1994.

Annexure A6: Copy of the Office Order No.13/94 dated 7.4.1994.

Annexure A7: Copy of the Office Order No.975/96 dated 7/8th November, 1996.

Annexure A8: Copy of the Office Order No. 409/97 dated 22nd October, 1997.

Annexure A9: Copy of the Office Order No. 230/2002 dated 18.3.2002.

Annexure A10: Copy of the letter dated 7.8.2003 by the applicant.

Annexure A11: Copy of the Office Order No. 623 of 2007 dated 20.8.2007.

Annexure A12: Copy of the Office Order No.A-12023/1/2004-PE II dated 9th Nov. 2007.

Annexure A13: Copy of the Office Order No.116 of 2008 dated 26/27.2.2008.

Annexure A14: Copy of the Office Order No.626/2008 dated 16/17.9.2008.

Annexure A15: Copy of the Office Order No.792/2010 dated 13.12.2010.

Annexure A16: Copy of the letter No.PAO/ALHW/Pension/2013/1406-07 dated 10/12.2.2014.

Annexure A17: Copy of the representation dated 21.3.2014 together with the pension calculation in respect of T.P.Sayed Mohammed and Shri R.Subramaniam.

Annexure A18: Copy of the letter dated 2.4.2014 from the applicant addressed to the first respondent.

Annexure A19: Copy of the Office Order No.220/2014 dated 19.4.2014.

Annexure A20: Copy of the pay slip of the applicant for the month of April, 2014.

Annexure A21: Copy of the letter dated 8.5.2014 addressed to the 3rd respondent.

Annexure A22: Copy of the letter dated 12.5.2014 from the third respondent to the first respondent.

Annexure A23: Copy of the letter No.DCE/KVT/Estatt/Pension/1767/1678 dated 4th June, 2014 from office of the third respondent to PAO.

Annexure A24: Copy of applicant's representation dated 10.7.2014 addressed to the first respondent.

Annexure A25: Copy of letter No.DCE/KVT/Estatt/Pension/1504/2080 dated 19.7.2014.

Annexure A26: Copy of letter No.DCE\KVT/Estatt/Pension/1504/2179 dated 31.7.2014.

Annexure A27: Copy of letter No.PAO/GPF/ID/408/606-07dated 11.7.2014

Annexure A28: Copy of letter dated 11/2014/V.Prakasan/88100400127/1036 dated 21.8.2014

Annexure A29: Copy of the letter dated 20.9.2014 of the applicant.

Annexure A30: Copy of the letter dated 5.12.2014 of the applicant.

Annexure A31: Copy of the pension calculation sheet of the applicant.

Annexure A32: Copy of the pension calculation sheet of the applicant.

Annexure A33: Copy of the letter No.PD-25021/2012-MP (ALHW) dated 26.9.2014.

Annexure A34: Copy of order No.ALHW/CR/12(1)/2013/64 dated 30.12.2014 of the Administrative Officer, Office of the 3rd respondent issued to the 4th respondent.

Annexure A35: Copy of the order of this Tribunal dated 22.1.2015 rendered in OA No.180/01123/2014.

Annexure A36: Copy of representation dated 27.1.2015 submitted by the applicant before the 3rd respondent.

Annexure A37: Copy of order bearing No.ALHW/CR/12(1)/2013/888 dated 26/27.3.2015 of the 3rd respondent issued to the applicant.

Annexure A38: Copy of the statement.

Annexure A39(a): Copy of the order dated 4.1.2013.

Annexure A39(b): Copy of the Pension Payment Order dated 26.9.2013.

Annexure A39(c): Copy of the Pension Payment Order dated 26.9.2013.

Annexure A40: Copy of the letter dated 3.11.2015.

Annexure A41: Copy of the letter under the RTI Act sent by the applicant dated 5.8.2016.

Annexure A42: Copy of the letter dated 20.8.2016 from the 4th respondent.

Annexure A43: Copy of the O.M. Dated 2.3.2016.

Annexure A44: Copy of the fixation statement order dated 17.7.2008.

Annexure A45: Copy of the order of Ministry dated 15.9.2008.

Annexure A46: Copy of the office memorandum.

Annexures filed by the respondents:

Annexure R1: Copy of letter No.PD-25021/5/2014-MP dated 30.4.2014.

Annexure R2: Copy of office order bearing No.838/2007 dated 15.11.2007.

Annexure R3: Copy of letter No.A-12023/1/2004-PE.II dated 7.11.2007.

Annexure R4: Copy of letter No.PD-25021/5/2014-MP dated 30.4.2014.

Annexure R5: Copy of letter No.ALHW/ADM//2(19)/2013/1512 dated 28.5.2015.

Annexure R6: Copy of Letter No.ALHW/Genl/5(2)/2016/2853 dated 19.10.2016.

Annexure R7: Copy of letter No.A.12023/1/2004-PE.II dated 7.11.2007 of Ministry of Shipping, Govt. of India.

Annexure R8: Copy of order No.838/2007 dated 15.11.2007.

Annexure R9: Copy of letter No.PD-25021/5/2014-MP dated 30.4.2014.

Annexure R10: Copy of Ministry of Shipping letter dated 26.9.2014.