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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00454/2018

Wednesday, this the 13th day of February, 2019

CORAM:

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

1. Smt.K.U.Sobhana,
Aged 58 years,
W/o K.K.Subhashan,
Superintendent,
Regional Passport Office,,
Cochin,
Residing at 'Quarter No.3/21,
Passport Office Quarters,
Perumanoor,
Cochin – 682 015.

2. Shri K.Muraleedharan Pillay,
Aged 47 years,
S/o M.G.Kumar,
Assistant, Regional Passport Office,
Cochin,
Residing at 'Quarter No.3/12,
Passport Office Quarters,
Perumanoor,
Cochin – 682 015.

(By Advocate Mr.Shafik M.A.)

Versus

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of External Affairs,
New Delhi- 110 001.

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2. The Chief Passport Officer &
Joint Secretary (CPV),
Ministry of External Affairs,
New Delhi – 110 001.Respondents

(By Mr.N.Anilkumar, SCGSC for Respondents)

This application having been heard on 8th February, 2019, the Tribunal on 13th February, 2019 delivered the following :

ORDER

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

OA No.454/2018 is filed by Smt.K.U.Sobhana, Superintendent and Shri Muraleedharan Pillay, Assistant, both working in the Regional Passport Office, Cochin, against the refusal of the respondents to reckon their date of initial entry into service for granting them financial upgradation as per ACP Scheme computed on completion of 12 years of service. The reliefs sought in the OA are as follows:

- (i) To call for the records relating to Annexure A1 to A8 and to declare that the applicants are entitled to be granted financial upgradation as per ACP Scheme with effect from the date of initial entry i.e. 25.09.1989 and 23.07.1990 respectively, on par with similarly situated officials;
- (ii) To direct the respondents to grant financial upgradation as per ACP Scheme as has been done as per A-5 & A-6 based on A-3 order of this Hon'ble Tribunal to the the applicants with effect from 25.09.1989 and 23.07.1990 respectively with all consequential benefits including all attendant promotions, actual pay fixation and arrears of pay and place the applicants in the correct spots based on the date of initial entry;
- (iii) To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case;

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And

(iv) To grant the costs of this original application.

2. The first applicant had joined the services of the respondents as Lower Division Clerk (LDC) on daily wages with effect from 25.09.1989. She was regularised in service as LDC with effect from 06.10.1994. Subsequently, she was promoted as UDC on 26.01.2003, as Assistant on 01.04.2012 and as Superintendent from 01.04.2017. The second applicant started his career as daily rated Clerk with effect from 23.07.1990 and was regularised as LDC with effect from 06.10.1994. In consequence to the orders of this Tribunal dated 14.07.2003 in OA No.1557/1998 and OA No.436/2005 dated 13.06.2005, orders were issued on 23rd September, 2005 (Annexure A1) and 6th September, 2005 (Annexure A2) granting notional fixation of pay, eligibility to appear in any test or examination, counting of qualifying service for terminal benefits from 25.09.1989 and 23.07.1990 respectively to the two applicants in this OA. Thus for practical purposes they were regularised in service of the respondents from 25.09.1989 and 23.07.1990 respectively except for seniority in the grade of LDC which was to be granted from 1994 only.

3. However, the respondents did not reckon the date of entry into service as relevant date for granting ACP benefits and were determined to take into account only the date of regularisation, which was 06.10.1994, on the

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ground, the first applicant was promoted as UDC on 26.01.2003 and the second applicant as UDC on 27.10.2006. The respondents took a view that neither of them remained as LDCs for 12 years from the date of regularisation. As the first financial upgradation under ACP was due only to employees who had remained for a period of 12 years or more in the same grade, the applicants were refused the said benefit.

4. As matters stood thus, some colleagues of the applicants approached this Tribunal in OA No.1027/2011 and in order dated 08.02.2013 (Annexure A3) this Tribunal ordered to grant financial upgradation on completion of 12 years of service with effect from the date of entry, they were holding LDC post to the applicants therein. This was challenged by the respondents before the Hon'ble High Court of Kerala in OP (CAT) No.2383/2013, but without success (Annexure A4). The respondents issued orders at Annexure A5 in due compliance with the judicial orders. However, the same yardstick was not adopted in the applicants' case. They submitted representations, (Annexure A7 and A8), but these did not meet with success.

5. As grounds, the applicants contend that their case is squarely covered as those of their colleagues who had been granted the benefit of ACP from the date of their initial entry into service. It was true that the applicants who had joined service in 1989-90 had to wait till 2005 to be regularised due to inaction by the respondents. All these years they continued to discharge

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their duties in the clerical cadre. This service has been regularised for all purposes except for seniority due to judicial intervention. In fact this Tribunal in paragraph-11 of Annexure A3 order has stated thus.

“..... the case of the applicants is identical to one in O.A.No.523 of 2004 wherein the order allowing the O.A. Holding that for the purpose of ACP benefit, the services of the applicants from the initial date of engagement should be considered, had been affirmed by the High Court in Civil Writ Petition 8271 of 2007 vide judgment dated 9th April 2008 and when the Respondents has taken up the matter before the Apex Court vide SLP (c) No.29272 of 2008, the same was dismissed on 11.09.2009 stating that since all the Respondents (Applicants in O.A. 523 of 2004) have been granted all the benefits, the SLP has been rendered infructuous.”

6. The respondents have filed a reply statement wherein they have disputed the contentions of the applicants on the ground that they do not possess 12 years of regular service in the grade of LDC. As they got regular promotion within 10 years of joining service in the post of LDC, they are not eligible to get the benefits of ACP. The respondents insist that regular service in the case of the applicants means service rendered as regular LDCs from 06.10.1994 only. The applicants have filed rejoinder wherein the contentions made in the OA have been reiterated. It is submitted that the Hon'ble Supreme Court has dismissed the SLP in No.10058/2014 on 11.01.2017 filed by the respondents against the orders of this Tribunal and High Court of Kerala (Annexure A3 and A4). The first financial upgradation under ACP has been granted to one K.R.Reena and 7 others who are similarly placed employees, on completion of 12 years from the date of their initial

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engagement as daily rated LDCs.

7. The applicants in the OA were all regularised in service by virtue of Annexure A1 and A2. The same orders specify that their service is to be deemed as regularised from the date of initial engagement as daily rated Clerks except for seniority in the grade of LDCs. They claim the first financial upgradation under ACP, having worked in the grade of LDCs for more than 12 years. This question has been adequately examined by this Tribunal in OA No.1027/2011 (Annexure A3). As per the orders, portion of which is quoted already, similarly placed employees have been granted the benefit of ACP from the date they completed 12 years from their initial engagement. The applicants in this OA are also entitled for the same benefits.

8. OA succeeds. The benefit of first financial upgradation is to be granted to the applicants from the date they completed 12 years from the date of their engagement. Orders to be issued within three months on 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.180/00454/2018

1. **Annexure A1** – True copy of the Order No. V.IV/578/58/95 dated 23.09.2005 issued on behalf of the 1st Respondent.
2. **Annexure A2** – True copy of the Order No.V.IV/578/195/95 dated 06.09.2005 issued on behalf of the 1st Respondent.
3. **Annexure A3** – True copy of the order dated 08.02.2013 of the Hon'ble Tribunal in O.A.No.1027/2011.
4. **Annexure A4** – True copy of the judgment dated 09.07.2013 of the Hon'ble High Court in O.P (C.A.T) No.2383/2013.
5. **Annexure A5** - True copy of the Office Order No.V.IV-II/441/37/2011 dated 31.03.2014 issued on behalf of the 1st Respondent.
6. **Annexure A6** – True copy of the Office Order No.CDR-II/441/37/2011 dated 31.10.2017 issued on behalf of the 1st Respondent.
7. **Annexure A7** - True copy of the Representation dated 04.12.2017 submitted by the 1st Applicant.
8. **Annexure A8** - True copy of the Representation dated 01.12.2017 submitted by the 2nd Applicant.
