

**CENTRAL ADMINISTRATIVE TRIBUNAL,**  
**ERNAKULAM BENCH**

**Original Application No. 181/00075/2015**

**Wednesday, this the 23<sup>rd</sup> day of January, 2019**

**CORAM:**

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

- 1) Sayed Shaik Koya Thangal, Assistant Engineer (Electrical),  
Department of Electricity, UT of Lakshadweep, Kadmat,  
Pin – 682 556 - **(Died)**.
- 2) Suharabi, W/o. Sayed Shaik Koya Thangal,  
aged 48, Puthiyazhikkakam Androth Island,  
UT of Lakshadweep – 682 551.
- 3) Sayyid Mohammed Nasarudheen Thangal,  
S/o. Sayed Shaik Koya Thangal,  
aged 29, Puthiyazhikkakam Androth Island,  
UT of Lakshadweep – 682 551.
- 4) Sayyid Mohammed Saadudheen,,  
S/o. Sayed Shaik Koya Thangal,  
aged 24, Puthiyazhikkakam Androth Island,  
UT of Lakshadweep – 682 551. .... **Applicants**

**(By Advocate : Mr. Poly Mathai)**

**V e r s u s**

1. Administrator, UT of Lakshadweep, Kavaratti,  
Pin – 682 555.
2. Executive Engineer, Electricity, UT of Lakshadweep,  
Kavaratti, Pin – 682 555.
3. Union of India, represented by the Secretary to Govt. of India,  
Ministry of Home Affairs, New Delhi – 110 001. .... **Respondents**

**[By Advocates : Mr. S. Manu (R1&2) &  
Mr. N. Anilkumar, SCGSC (R3)]**

This application having been heard on 10.01.2019 the Tribunal on  
23.01.2019 delivered the following:

**ORDER**

**Hon'ble Mr. Ashish Kalia, Judicial Member –**

The relief claimed by the applicant No. 1 are as under:

- “i) To declare that the applicant is entitled to the ACP benefits from 21.9.2006 and MACP benefits from 21.9.2012 with arrears and interest thereon.
- ii) To direct the respondents to grant the benefits due to the applicant by way of ACP and MACP from the year 2006 and 2012 respectively with retrospective effect and pay arrears with interest at 12% thereon.
- iv) Issue any other order or direction as deemed just, fit and necessary in the facts and circumstances of the case.”

2. The brief facts of the case are that the applicant No. 1 joined respondents 1 & 2 as Junior Engineer (Electrical) on 21.9.1982. He was promoted as Assistant Engineer (Electrical) from 21.7.1990. He had more than 32 years of service under the respondents. The applicant No. 1 is aggrieved by the inaction on the part of the respondents in not granting him the benefits of MACP even after completion of 30 years of service. While working as Assistant Engineer (Electrical) there were certain allegations of malpractice and CBI conducted an enquiry and it recommended departmental action against applicant No. 1 in the year 2003. The respondents issued charge sheet on 11.8.2009. Thereafter when nothing happened the applicant No. 1 approached this Tribunal in OA No. 850 of 2013 seeking to quash the charge sheet. However, this Tribunal directed the respondents to complete the disciplinary proceedings within four months. The respondents imposed punishment of withholding of promotion for 5 years by order dated 27.10.2014. The applicant No. 1 has filed an appeal against the said order. The applicant No. 1 completed 24 years of service on

21.9.2006 and became eligible for 2<sup>nd</sup> ACP. However, the respondents did not grant the benefits to the applicant No. 1. Further the applicant No. 1 completed 30 years of service on 21.9.2012 and became eligible for 3<sup>rd</sup> MACP. The said benefit was also not granted to him. Aggrieved the applicant No. 1 has filed the present OA.

3. Notices were issued to the respondents. They entered appearance through S. Manu for respondents Nos. 1 & 2 and Shri N. Anilkumar, SCGSC for respondent No. 3. Respondents 1 & 2 contended in the reply statement that the benefits of ACP and MACP were not awarded to applicant No. 1 due to the pendency of the disciplinary proceedings against him. The Department had initiated a departmental enquiry against the applicant on the recommendation of the CBI for major penalty while he was working as Assistant Engineer (Electrical). The charge sheet was issued on 11.8.2009. The applicant No. 1 submitted his reply denying all the charges framed against him by his statement dated 10.9.2009. The enquiry officer submitted his report and the disciplinary authority after careful consideration of the enquiry report and material evidence on record imposed a penalty of withholding the next promotion for a period of 5 years upon the applicant No. 1. The respondents 1 and 2 submitted that according to Para 11 of Annexure I to the ACP Scheme stipulates that in the matter of disciplinary/penalty proceedings, grant of benefits under the ACP scheme shall be subject to rules governing normal promotion. Such promotion shall therefore, be regulated under the provisions of relevant CCS (CCA) Rules, 1965 and instructions thereunder. Further in paragraph 4 of the ACP

scheme it stipulates that the first financial upgradation under the ACP scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the 1<sup>st</sup> financial upgradation subject to fulfillment of prescribed conditions. In other words if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc. this would have consequential effect on the second upgradation which would also get deferred accordingly. The applicant No. 1 became eligible to be considered for 1<sup>st</sup> ACP only on 21.9.2006. Even before the constitution of the screening committee proceedings were initiated against the applicant on 17.3.2007. Therefore, ACP benefits could not be considered during that period. Subsequently, he was imposed a penalty of barring promotion for a period of 5 years. If an officer is not entitled to get promotion he is not entitled to get the benefits under the ACP/MACP scheme which is given in the absence of promotional avenues to eligible and qualified officers to avoid stagnation. Since applicant No. 1 was not eligible for promotion during the period of penalty and the disciplinary proceedings he is not entitled to get ACP/MACP benefits during that period. Respondents pray for dismissing the OA.

4. Heard Shri Poly Mathai learned counsel appearing for the applicant and learned counsel appearing for respondents 1 & 2 and learned counsel appearing for respondent No. 3. Perused the record.

5. During the pendency of this case applicant Sayed Shaik Koya Thangal expired on 7.4.2016 and his wife and children were impleaded as legal heirs of late Sayed Shaik Koya Thangal. The relief claimed by the applicants in the present OA is for a direction to the respondents that the applicant No. 1 is entitled to ACP benefits from 21.9.2006 and MACP benefits from 21.9.2012 with arrears and interest thereon. The respondents in their reply statement very categorically submitted that the benefits of ACP and MACP were not awarded to applicant No. 1 due to the pendency of the disciplinary proceedings against him. The enquiry officer submitted his report and the disciplinary authority after careful consideration of the enquiry report and material evidence on record imposed a penalty of withholding the next promotion for a period of 5 years upon the applicant No. 1. Para 11 of Annexure I to the ACP Scheme stipulates that in the matter of disciplinary/penalty proceedings, grant of benefits under the ACP scheme shall be subject to rules governing normal promotion. Further in paragraph 4 of the ACP scheme it also stipulates that the first financial upgradation under the ACP scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the 1<sup>st</sup> financial upgradation subject to fulfillment of prescribed conditions. In other words if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc. this would have consequential effect on the second upgradation which would also get deferred accordingly. The applicant No. 1 became eligible to be considered for 1<sup>st</sup> ACP only on 21.9.2006. Even before the constitution of the screening committee, proceedings were

initiated against the applicant on 17.3.2007. Therefore, the ACP benefits could not be considered during that period. Subsequently, he was imposed a penalty of barring promotion for a period of 5 years. If an officer is not entitled to get promotion he is not entitled to get the benefits under the ACP/MACP scheme which is given in the absence of promotional avenues to eligible and qualified officers to avoid stagnation. Since applicant No. 1 was not eligible for promotion during the period of penalty and the disciplinary proceedings he is not entitled to get ACP/MACP benefits during that period. That being so at this stage the applicant No. 1 is not entitled to get ACP/MACP benefits from the years 2006 and 2012 respectively as during these periods the disciplinary proceedings were initiated and applicant No. 1 was imposed with a punishment.

6. However, we also find that in the present case the applicant No. 1 expired and his legal heirs were brought on record as applicants Nos. 2 to 4. They have taken a specific contention in the rejoinder by producing Annexure A8 indicating that applicant No. 1 had filed an appeal against the punishment order issued by the respondents. This being a statutory appeal the respondents are bound to decide it on merits. Accordingly, while moulding the reliefs claimed by the applicants, we feel that ends of justice would be met if the respondents are directed to consider and decide Annexure A8 appeal filed by applicant No. 1 on merits within a period of three months from the date of receipt of a copy of this order.

7. In view of the above, the Original Application is disposed of. There shall be no order as to costs.

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

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

**“SA”**

**Original Application No. 181/00075/2015****APPLICANT'S ANNEXURES**

- Annexure A1** - True copy of the charge sheet dated 11.8.2009 No. 1/4/2008 Estt./Ele./2004.
- Annexure A2** - True copy of the representation dated 15.3.2010 from the applicant to the 1<sup>st</sup> respondent.
- Annexure A3** - True copy of the representation dated 19.8.2011 from the applicant to the 1<sup>st</sup> respondent.
- Annexure A4** - True copy of representation dated 21.6.2013 from the applicant to the 1<sup>st</sup> respondent.
- Annexure A5** - True copy of the representation dated 5.3.2015 from the applicant to the 1<sup>st</sup> respondent.
- Annexure A6** - True copy of the judgment in OA 850/2013 of the Hon'ble Tribunal dated 27.11.2013.
- Annexure A7** - True copy of order of 1<sup>st</sup> respondent dated 27.10.2014.
- Annexure A8** - True copy of the appeal filed by the applicant along with the petitioner for condoning delay.
- Annexure A9** - True copy of the appeal dated 16.6.2015.
- Annexure A9(a)** - True copy of the delay condonation petition dated 16.6.2015.
- Annexure A10** - True copy of the forwarding letter F. No. 1/6/2015-Ele(Kdt) dated 18.6.15.
- Annexure A11** - True copy of the representation dated 7.6.2017.

**RESPONDENTS' ANNEXURES**

- Annexure R1(a)** - True copy of the Office Memorandum F. No. 1/4/2008-Estt/Ele/2171 dated 13.9.2013.
- Annexure R1(b)** - True copy of the office memorandum No. 35034/1/97-Estt (D) dated 9.8.1999.
- Annexure R1(c)** - True relevant extract of the DoP&T OM No. 21/5/70-Estt(A) dated 15.5.1971.

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