

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application Nos.181/00008/2015

Monday.., this the 25..th day of February, 2019

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

1. P.K.Ibrahim S/o.Hamza,P.
Aged 47 years, working as Typewriting Instructor
Now under Village (Dweep) Panchayat
Union Territory of Lakshadweep, Chetlat Island-682 554
2. Cheriyakoya, P.P, S/o.Late A.Ahamed, aged 48 years
Working as Typewriting Instructor, now under
Village (Dweep) Panchayat, Union Territory of
Lakshadweep, Kadamat – 682 556
3. Smt.Sayida Beegum, P. W/o.Sayed Shaikoya
aged 38 years, Working as Typewriting Instructor
now under Village (Dweep) Panchayath
Union Territory of Lakshadweep, Amini-682 552
4. A.P.Zakariya S/o.Late Sayed Buhari T.P
aged 49 years, Working as Typewriting
Instructor, now under Village (Dweep)
Panchayath, Union Territory of Lakshadweep
Agatti – 682 553

Applicants

(By Advocate – Mr.N.Unnikrishnan)

V e r s u s

1. The Union of India represented by the Secretary
to Government of India, Ministry of Personnel and
Public Grievances, Department of Personnel and Training
New Delhi – 110 001
2. The Administrator, Union Territory of Lakshadweep
Kavaratti – 682 555
3. The Collector and Development Commissioner
Union Territory of Lakshadweep
Kavaratti – 682 555
4. The Director, Labour and Employment,

Union Territory of Lakshadweep, Kavaratti -682 555

5. The Executive Officer, Village (Dweep) Panchayat Kadmat – 682 556	
6. The Executive Officer, Village (Dweep) Panchayat Chetlat – 682 554	
7. The Executive Officer, Village (Dweep) Panchayat Amini – 682 552	
8. The Executive Officer, Village (Dweep) Panchayat Agathi – 682 553 Respondents

(By Advocate – Mr.K.C.Muraleedharan,ACGSC for R1, Mr.S.Manu for
R 2-8)

This Original Application having been heard and reserved for orders
on 5.2.2019, the Tribunal on 25/2/2019 delivered the following:

O R D E R

Per: Mr.Ashish Kalia, Judicial Member

The reliefs sought in the Original Application are as follows: -

- “i. Call for the records leading to issuance
Annexure – A7
- ii. Declare that applicants are entitled to get the
Financial Up-gradation under ACP and MACP in the
pay scale of Rs.5500-9000 with GP 4600 and
Rs.9300-34800 with Grade Pay of Rs.4800/-
respectively.
- iii. Declare that the awarding of financial up-
gradation benefits under ACP and MACP granted by
Annexure A7 in the scale of pay of Rs.4500-7000
with GP 2800 and in the scale of pay of Rs.9300-
34800 with GP 4200 needs modification and
therefore, it is unsustainable to that extent;
- iv. Quash the Annexure A7 in so far as awarding
of financial upgradation benefits under ACP and
MACP granted to the applicants by it in the scale of
pay of Rs.4500-7000 with GP 2800 and Grade Pay
of Rs.4200 in the scale of pay of Rs.9300-34800;
- v. Issue appropriate Order or direction to the
respondents to issue modified order awarding

.3.

Financial Up-gradation under ACP and MACP in the pay scale of Rs.5500-9000 with GP 4600 and Rs.9300-34800 with Grade Pay of Rs.4800 respectively to the applicants and release the benefits within a reasonable time;

vi. Issue such other appropriate order or direction as the Hon'ble Tribunal may deem fit and necessary in the interest of justice and fair play. ”

2. The brief facts of the case are as under:

Applicants are working as Typewriting Instructors and their services have been regularised by this Tribunal 's order in O.A 505/2009 and in O.A 244/2010. Applicants claimed that they are entitled to get ACP and applicants Nos.1,2 and 4 are entitled to get MACP as per Annexure A3 to A5, but the same was denied to them. Hence they approached this Tribunal in O.A 181/00032/2014 and it was disposed of by this Tribunal by directing the respondents to take a decision on the representations strictly on their merits and in accordance with law. Thereafter CP(C) No.9/2014 has been filed as they granted only financial upgradation under ACP and MACP in a lower pay scale of Rs.4500-7000 (1st ACP) and Rs.9300-34,800 with Grade Pay of Rs.4200(2nd MACP) as against their entitled pay scale of Rs.5500-9000 with Grade Pay of Rs.4600 for ACP and Rs.9300-34800 with Grade Pay of Rs.4800/-in MACP as shown in the comparative statement given in para 13 in the O.A. It is further submitted that erroneous fixation of the benefits were pointed by Annexures A-6 to A11 representations, but the same is not rectified. Hence they approached this Tribunal. It is further submitted that the employees holding same rank as Typewriting Instructors

have been granted correct benefits so also counter parts in the Education Department so also other teaching staff and similar categories but denied to them. Lastly, they submitted that there is no justification to deny the same to the applicants and same is liable to be quashed in terms of Article 14, 16, 19, 21 and 309 of the Constitution of India so also violation of principles of natural justice.

3. Notices were issued and the respondents put appearance through their counsel and filed reply statement. It is stated therein that applicant number 1 was appointed as Stenographer Gr.III on 23.12.1988 in the General Administration Department. In 1996 he was temporarily transferred to the post of Typewriting Instructor and appointed in the Government High School, Androth subject to the condition that he will be transferred back to his parent post of Stenographer Gr.III as and when qualified candidates are appointed to the post of Typewriting Instructor. Meanwhile he was promoted as Stenographer Gr.II on regular basis. But he declined to accept the promotion and requested to regularise his ad-hoc posting of Typewriting Instructor. The competent authority rejected his request and directed him to accept the promotion to the post of Stenographer Gr.II since he was not recruited to the post of Typewriting Instructor on regular basis. Against the above decision of the competent authority, he approached this Tribunal by filing O.A No.244/2010 to get his posting as Typewriting Instructor regularised. On 4.10.2010, he was regularised as Typewriting Instructor in the light of the order in O.A 244 of 2010 by Annexure A2 order issued by the Director (Services). His appointment was in the department of Labour

.5.

& Employment and Labour and Employment is having separate Recruitment Rule and has no promotional/feeder post. It is an isolated post as stipulated in clause 31 of Annexure A-5 O.M dated 10.2.2000. Since the post of Typewriting Instructor held by the applicants is an isolated one which comes under Clause 31 of Annexure A-5 O.M, the ACP/MACP benefits granted to them are in accordance with Rules. Therefore, they are not eligible to get higher grade pay.

4. It is further submitted that the case of these Typewriting Instructors are not coming under Clause No.32 of Annexure A-5 but under clause 31 of the clarifications in Annexure A5. The Typewriting Instructor under Labour & Employment is not an analogous post of Typewriting Instructor and Craft Teachers under Education Department. In Education Department, they have been posted in the pay band of Rs.9300-34800 with GP of Rs.4200 whereas in Labour and Employment, Typewriting Instructors have been posted in the pay band of Rs.5200-20200 with GP of Rs.2400/-. Hence the applicants are not eligible to get higher grade pay as claimed by the applicants. It is further pleaded that the post of Typewriting Instructor under the Department of Labour & Employment and Department of Education are different since the job requirements for both are different. Otherwise, these posts would have been inter-transferable and hence, the claim of the applicants for grant of MACP at par with the employees of Education Department cannot be agreed to. Respondents pray for dismissal of the Original Application.

5. Applicants have filed rejoinder thereto reiterating the contentions.

Additional reply statement has also been filed by the respondents.

6. Heard N.Unnikrishnan, learned counsel for the applicants, Mr.K.C.Muraleedharan,ACGSC, learned counsel for respondent no.1 and Mr.S.Manu, learned counsel for respondent nos.2 to 8.

7. The points raised in this Original Application by the applicants herein are whether they are entitled to get the pay scale of Typewriting Instructors at par with Typewriting Instructors in the Education Department in the pay scale of Rs.9300-34800 with Grade Pay Rs.4200/. The counsel for the applicant has tried to impress this Tribunal by raising the ground of equality; equal pay for equal work and also cited the judgment of the Principal Bench of C.A.T in **O.A No.904/2012** in which Lower Division Clerks who were working in Ministry of Defence had approached this Tribunal for grant of MACP in the next promotional grade pay of Rs.4200/- and ultimately they succeeded in getting the pay scale of Rs.9300-34800 with Grade Pay of Rs.4200/- and the same was upheld by the Punjab and Haryana High Court also. In fact, while going through this judgment, the facts of this case are different with the present case. Hence this judgment cannot be cited as similar to that of applicants herein. On the contrary, respondents have taken the stand that the posts of Typewriting Instructors under Department of Labour & Employment and Department of Education are not identical in nature and hence are not comparable. Means, their Recruitment Rules, nature of duty etc are different. As per Clause 31 of Annexure A-5 O.M applicable, being isolated post, applicants are entitled to

get ACP & MACP in the next grade applicable i.e, Pay Band of Rs.5200-20200 with GP of Rs.2400/- and not as asked by the applicant in the Pay Band of Rs.9300-34800 with GP of 4200/-. Clause 31 of Annexure A-5 O.M reads as follows:

31	What is an isolated post for the purpose of the ACP Scheme	Isolated post is a stand alone post, having neither feeder grade nor promotional grade. As such, a post having no promotional grade but having a feeder grade and vice-versa shall not be treated as isolated post for the purpose of ACPS
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8. Applicants have cited the judgment passed by the Hon'ble Kerala High Court in the Matter of *Administrator v. P.Madharsha & Ors* in OP(CAT) No.1194 of 2010 wherein the Hon'ble High Court has held as follows:

“ 8. The clarification 10 is clinching in respect of the proper implementation of the ACP Scheme. Sports Boy is an isolated post. Therefore, the Scheme envisages implementation of ACP Scheme in respect of isolated posts in a manner by granting the O.P.(CAT) No. 1194 of 2010 : 8 : scales of pay as applicable to similar posts in the same Ministry/Department/Cadre. The posts of Sports Boy and Fisherman come under the same Ministry. The clarification 10 for implementing ACP Scheme in respect of isolated posts leaves no doubt that such posts are entitled to similar treatment as given to similar posts in the same Ministry. Therefore, on a simple reading of this provision, it can be safely concluded that if the post of fisherman under the same Ministry is a post similar to Sports Boy, the Sports Boy is also entitled to the benefits which are available to fisherman when ACP Scheme is implemented. The Tribunal categorically found that both these posts carry similar scales of pay, qualification for initial recruitment is one and the same namely, the 4 th standard and

both these posts belong to Group D coming under same Department namely, Education Department. As earlier said, the Sports Boy working in the Education Department and Fisherman working in the Education Department and Fisheries Department are coming under the Home Department. In view of these matters, we do not find any infirmity or illegality with the order passed by the CAT. This original petition challenging the order of the learned Tribunal in respect of the benefits to be granted to Sports Boy is devoid of any merit and is liable to be dismissed. In the case of NCC Lascars, the learned Tribunal granted them an opportunity to approach the establishment with their grievance. We find no reason for the establishment to challenge the said opportunity granted to NCC Lascars. It is open for them to consider the case of NCC Lascars in the light of the law applicable. Therefore, the challenge in respect of that direction also fails.

In the result, this original petition is dismissed. “

9. A similar question was raised before the Hon'ble High Court of Kerala and it was decided by the High Court that ACP scheme in respect of isolated posts leaves no doubt that such posts are entitled to similar treatment as given to similar posts in the same Ministry/Department/Cadre. The post should be under the same Ministry, then only it can be equated. But in the present case, two different posts (Typing Instructor and Typin Instructor(Staff Techers) are equated which falls under different parts of the different Ministries. Thus, the benefit of the judgement passed by this Hon'ble High Court is not extendable to the applicants herein. The simple reason for not extending the benefit is because the Hon'ble High Court categorically held the word 'same Ministry' means, nature of work, pay scale attached to it, duties and responsibilities etc are to be similar. Thus, they are working in the Department of Employment and the Recruitment Rules of the Employment Department is different and being isolated post, the pay benefits of ACP/MACP will be granted in accordance with pay scale already enjoyed by the applicants herein.

.9.

10. We find no merit in the present case. Hence, the same is dismissed.

No costs.

Sd/-
(ASHISH KALIA)
JUDICIAL MEMBER

Sd/-
(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures

Annexure A-1 - A true copy of common order dated 28.7.2010 in O.A No.505/2009 and in O.A No.244/2010

Annexure A-2 - A true copy of order F.No.12/21/2010-Services dated 4.10.2010

Annexure A-3 - A true copy of Office Memorandum No.35034/1/97-Estt(D) dated 9.8.1999

Annexure A-4 - A true copy of Office Memorandum No.35034/3/2008 Estt(D) dated 19.5.2009

Annexure A-5 - A true copy of Office Memorandum F.No.35034/1/97-Estt(D) (Vol.IV) dated 10.2.2000

Annexure A-6 - A true copy of the order dated 11.4.2014 in O.A No.181/00032/2014

Annexure A-7 - A true copy of office order F.No.24/07/2010-EEL dated 30.10.2014

Annexure A-8 - A true copy of the representation dated 24.12.2014

Annexure A-9 - A true copy of the representation dated 26.12.2014

Annexure A-10 - A true copy of the representations dated 1.1.2015

Annexure A-11 - A true copy of the representations dated 26.12.2014

Annexure A-12 - A true copy of the order dated 26.11.2012 in O.A No.904/2012

Annexure A-13 - A true copy of order dated 19.10.2011 in C.W.P 19387/2011

Annexure A-14 - A true copy of the order dated 14.7.2014 in W.P.C No.3608/14 rendered by Delhi High Court(Counsel for Education Research and Training v. Omprakash)

Annexure A-15 - A true copy of the order dated 29.11.2010 in O.A 518/2005 (Bombay Bench)

Annexure A-16 - A true copy of the order dated 31.7.2014 in O.A 2548/2014 (Krishna Swaroop Sarma & Others v. Union of India and others) (Principal Bench)

Annexure A-17 - A true copy of the order F.No.55/7/96-Edn dated 16.10.1997

Annexure A-18 - A true copy of order F.No.1/24/90GHS(1) Edn dated 7.11.1997

Annexure A-19 - A true copy of pay fixation statement under Central Civil Service (Revised Pay) Rules, 1997 in respect of Shri.P.Karunakaran Nair

Annexure A-20 - A true copy of the Office Order F.No.18/16/2009-Edn/Estdt.(1) dated 3.5.2013 granting Financial Up-gradation under ACP/MACP to staff working under the Department of Education.

Annexure A-21:Annexure-A20. Sl.No.66 to 141 and 166 to 183 are relevant in this case.A true copy of Order F.No.4/8/2009-GHSA dated 20.3.2011 issued in respect of P.P.Kunhi Coir Craft Teacher,Union Territory of Lakshadweep, Kadamat

Annexure A22 - A true copy of statement of fixation of pay under Central Civil Service (Revised Pay) Rules, 1997 in respect of Shri.P.P.Kunhi

Annexure A23 - A true copy of order F.No.5/13/96-Edn dated 10.12.1997 issued to Smt.K.M.Sudhakrishna Devi and 3 others

Annexure A24 - A true copy of Statement of Fixation of Pay in Revised Pay Rules under 2008 in respect of Smt.K.Havva, Nursery Trained Teacher third person in Annexure A23

Annexure R2(a) - A true copy of the letter No.F.No.18/2/2008-Edn/Estdt./845 dated 9.11.2015

Annexure A25 - A true copy of the Laccadives, Minicoy and Amindivi Islands, Recruitment to Class III post in Education Department (Typewriting Instructor) Rules, 1970 published by Notification F.No.7/13/70-DEV.II dated 7.11.1970 in the Laccadives Gazette

Annexure A26 - A true copy of Lakshadweep Recruitment to Group C post in Education Department (Typewriting Instructor) (Amendment) Rule, 1984

Annexure A27 - To substantiate further the Coir Craft Instructor Fixation Statement F.No.26/6/86-Edn(27) dated 26.12.1986

Annexure A28 - A true copy of Fixation statement of Mechanical Instructor F.no.1/14/97-GHSA dated 1997

Annexure A29 - A true copy of Fixation Statement of Junior Librarian F.No.3/6/97-GHSK dated 1.5.1998

Annexure A30 - A true copy of Fixation Statement of Primary School Teachers Order F.No.44/4/90-Edn dated 8.12.1997

Annexure A31 - A true copy of the appointment order F.No.12/19/2001-Services dated 13.8.2003 issued to Shri.N.Mohammed Iqubal by the Secretary,(Administration)

Annexure A32 - A true copy of common order F.No.12/14/2005-Services dated 24.3.2005

Annexure A33 - A true copy of the office order F.No.12/59/96-Services dated 18.10.1997

Annexure A34 - A true copy of office order F.No.12/28/2002-Services dated 6.4.2002

Annexure A35 - A true copy of the office order F.No.12/28/2002-Service dated 21.10.2003

Annexure A36 - A true copy of letter F.No.7/13/2010-EEL dated 27.12.2010

Annexure A37 - A true copy of the order F.No.7/13/2011-EEL dated 11.4.2012

Annexure A38 - A true copy of the Message F.No.7/7/2011/EEL dated 10.2011.

Annexure A-39 - A true copy of order dated 31.5.2011 in O.A No.1038/CH/2010

Annexure A40 - A true copy of order dated 8.1.2015

Annexure A41 - A true copy of order dated 21.3.2014 in O.ANo.988/2014

Annexure A42 - A true copy of order dated 4.8.2105 in O.ANo.180/00540/2014

Annexure A43 - A true copy of order dated 30.3.2010 in O.A No.124/2009

Annexure A44 - A true copy of judgment dated 29.6.2015 in O.P(CAT) No.1194/2010

Annexure A45 - A true copy of order F.No.18/4/2016-Edn/Estt dated 24.6.2016

Annexure A-46 - A true copy of the certificate dated 3.9.2012 issued to Kum.Raseena Noor

Annexure A47 - An extract copy of Annual Plan relating to Labour and Employment

Annexure A48 - A true copy of Time Table for conducting Typewriting Courses and Computer Courses (Computer Fundamental, MS Office and Internet) relating to Village Dweep Panchayat, Chetlat.

Annexure A49 - A true copy of TimeTable for conducting Typewriting Courses and Computer Courses (Computer Fundamental, MS Office and Internet) relating to Village Dweep Panchayat, Agatti

Annexure-A50 - A true copy of Time table for conducting Typewriting Courses and Computer Courses (Computer Fundamental, MS Office and Internet) relating to Village Dweep Panchayat, Kadmat.

Annexure A51 - A true copy of the message F.No.7/9/2012- dated 12.10.2012

Annexure R2(b) - A true copy of proceedings F.No.1/1/93-EEL dated 6.5.1994

Annexure R2(c) - A true copy of the communication No.F.7-20/84- UTI dated 8.7.1988

Annexure R2(d) - A true copy of the office order dated 4.11.2015