

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00261/2019

Friday, this the 9th day of August, 2019

C O R A M :

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

1. K.R.Reena, Aged 53 years, W/o.C.S.Anilan,
Asst. Superintendent, Regional Passport Office,
Cochin, Panampilly Nagar, Kochi – 682 035.
Residing at Chackanad House, Abhayam,
Kesari Road, N.Parur – 683 513.
2. P.K.Sudharma, Aged 58 years, W/o.K.V.Dhruvan,
Asst. Superintendent, Regional Passport Office,
Cochin, Panampilly Nagar, Kochi – 682 035.
Residing at Kocheril House, VH Colony,
UC College PO, Aluva – 683 102.
3. C.V.Vijayalakshmi, Aged 59 years, W/o.C.K.Vijayan,
Asst. Superintendent, Regional Passport Office,
Cochin, Panampilly Nagar, Kochi – 682 035.
Residing at Chiramel House, SN Puram,
Thaikkattukara, Aluva – 683 101.
4. K.A.Sarojini, Aged 59 years, W/o.V.C.Venu,
Asst. Superintendent, Regional Passport Office,
Cochin, Panampilly Nagar, Kochi – 682 035.
Residing at Koonamthara House,
Perumpadanna, N.Parur – 683 513.
5. T.M.Vasanthakumari, Aged 56 years, W/o.K.Chandran,
Asst. Superintendent, Regional Passport Office, Cochin,
Panampilly Nagar, Kochi – 682 035.
Residing at Molampurathu Kottarathil House,
Irimpanam P.O., Ernakulam – 682 309.
6. C.C.Mani, Aged 59 years, W/o.N.K.Mohanan,
Asst. Superintendent, Regional Passport Office,
Cochin, Panampilly Nagar, Kochi – 682 035.
Residing at Nalukandathil, Njarackal,
Ernakulam – 682 505.

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7. K.M.Ponnu, Aged 59 years, W/o.M.K.Sadanandan, Asst. Superintendent, Regional Passport Office, Cochin, Panampilly Nagar, Kochi – 682 035. Residing at 2/3, RPO Quarters, Perumanoor PO, Kochi – 682 015.
8. N.M.Suhara Beevi, Aged 53 years, W/o.P.A.Abdul Nazar, Asst. Superintendent, Regional Passport Office, Cochin, Panampilly Nagar, Kochi – 682 035. Residing at Panayapilly House, Eloor North, Udyogamandal PO, Ernakulam – 683 501. ...Applicants

(By Advocate – Mr.Shafik M.A.)

v e r s u s

1. Union of India represented by Secretary to the Government of India, Ministry of External Affairs, New Delhi – 110 001.
2. The Chief Passport Officer & Joint Secretary (CPV), Ministry of External Affairs, New Delhi – 110 001.
3. The Regional Passport Officer, Regional Passport Office, Panampilly Nagar, Kochi – 682 035. ...Respondents

(By Advocate Mr.N.Anilkumar, SCGSC)

This Original Application having been heard on 5th August 2019, the Tribunal on 9th August 2019 delivered the following :

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

O.A is filed by Smt.K.R.Reena and 7 others who are presently working as Assistant Superintendents at Kochi. They had commenced their service as Lower Division Clerks (LDCs) on daily wages on being sponsored by the Employment Exchange and was regularized as LDC in 1997. They have filed this O.A aggrieved by the OM dated 29.8.2018 issued by the 3rd respondent refusing to grant them MACP benefits on

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completion of 20 years of service, refix their pay, drawal and disbursal of arrears of salary and other emoluments, consequent to implementing their own order granting regular appointment with effect from the date of initial entry as LDC. The reliefs sought by the applicants in the O.A are as follows :

1. To call for the records relating to Annexure A-1 to Annexure A-6 and to declare that the applicants are entitled to be granted MACP Benefits on completion of 20 years from their date of engagement, as has been reckoned in Annexure A-5 order consequent to Annexure A-2, Annexure A-3, Annexure A-4 and Annexure A-5 orders and denial of the same is illegal, arbitrary and violative of Articles 14 of the Constitution of India.
2. To direct the respondents to grant 2nd MACP upgradation of pay of the applicants as per MACP Scheme, on completion of 20 years from their date of engagement, as has been reckoned in A-5 order consequent to Annexure A-2, Annexure A-3, Annexure A-4 and Annexure A-5 orders ie. with effect from 17.4.2012 for 1st applicant, 25.9.2011 for applicant Nos.2 to 7 and 22.5.2012 for the 8th applicant and further upgradations, if any, with all consequential refixation and arrears of such refixation as has been granted to others like in Annexure A-11 with 18% interest.
3. To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case.
4. To grant the costs of this Original Application.

2. The applicants had earlier approached this Tribunal by filing O.A.No.1027/2011 when the respondents did not accede to their request for reckoning ACP from the date of initial entry. This Tribunal following its earlier orders, which was confirmed by the Hon'ble High Court, has allowed the O.A and directed the respondents to consider the case of the applicants for financial upgradations from the time they completed 12 years of service from the date of their holding the post of LDC and accord due financial upgradation as per ACP Scheme. The respondents had challenged the order of this Tribunal before the Hon'ble High Court and then before the Hon'ble

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Supreme Court. Both the cases were dismissed. Thereafter vide Office Order dated 31.10.2017 the applicants have been granted 1st financial upgradation under ACP Scheme with effect from the date of their initial entry with all consequential benefits. The applicants submit that as per the MACP Scheme, when an employee stagnates in the post for 10, 20, 30 years of service, the pay is enhanced to that of the next Grade Pay. The 1st applicant completed 20 years of service on 17.4.2012, 2nd to 7th applicants completed on 25.9.2011 and 8th applicant completed on 22.5.2012 respectively. Again the respondents are refusing to reckon their date of initial entry for grant of 2nd financial upgradation under MACP Scheme. The applicants have made representations against this which were rejected by the respondents as per Annexure A-1 orders stating the very same reason, compelling the applicants to approach this Tribunal.

3. As grounds the applicants have relied on the order of this Tribunal dated 25.1.2019 in O.A.No.180/957/2018 wherein it has been held that :

“.....Keeping in view the earlier orders referred to above on the subject, we direct the respondents to grant the benefits of 1st financial upgradation under the ACP Scheme with effect from 17.4.2002 and 2nd financial upgradation under the MACP Scheme with effect from 17.4.2010 with all consequential benefits arising therefrom within a period of three months from the date of receipt of a copy of this order.”

4. The respondents in their reply statement submitted that the applicants have rendered regular service in the post of LDC with effect from 22.4.1997 and they have been promoted to the next higher grade of an UDC on 27.11.2008, before completion of 12 years service in the grade of LDC. Following the order of the Hon'ble Supreme Court in SLP No.10058/2014

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these applicants were granted ACP benefits with effect from the dates of their initial engagement. The applicants were further promoted to the post of Assistant Superintendent with effect from 1.4.2017, ie., they had been promoted to the next higher grade before completion of 10 years service in the lower grade. Similarly, 'regular service' for the purposes of the MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Service rendered on adhoc/contract basis before regular appointment or pre-appointment training shall not be taken into reckoning. The respondents submit that temporary/daily wages service should not be counted for the purpose of grant of MACP benefits. Hence the applicants will be eligible for 2nd MACP benefits on completion of 20 years from the date of their regular appointment to the post of LDC.

5. This Tribunal had, time and again, through various orders had decided in favour of persons such as the applicants that for the purpose of ACP benefit, the services of the applicant from the initial date of engagement should be considered and this view had been affirmed by the Hon'ble High Court and Hon'ble Supreme Court. O.A.No.1027/2011, O.P. (CAT) No.2383/2013 and S.L.P.No.10058/2014 refers. Hence we have no hesitation in holding that the decisions referred to above governs the field. Accordingly the O.A is allowed. Keeping in view the earlier orders referred to above on the subject, we direct the respondents to grant the benefits of 2nd financial upgradation under the MACP Scheme on completion of 20 years from their date of engagement, as has been reckoned in Annexure A-5 order

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consequent to Annexure A-2, Annexure A-3, Annexure A-4 orders with effect from 17.4.2012 for Applicant No.1, 25.9.2011 for Applicant Nos.2-7 and 22.5.2012 for Applicant No.8 with all consequential benefits arising therefrom within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated ts the 9th day of August 2019)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00261/2019

- 1. Annexure A-1(a)** - True copy of the Office Memorandum No.CHN/551/14/2001/Vol.IV dated 29.8.2018 issued by the 3rd respondent.
- 2. Annexure A-1(b)** - True copy of the Office Memorandum No.CHN/551/14/2001/Vol.IV dated 29.8.2018 issued by the 3rd respondent.
- 3. Annexure A-1(c)** - True copy of the Office Memorandum No.CHN/551/14/2001/Vol.IV dated 29.8.2018 issued by the 3rd respondent.
- 4. Annexure A-1(d)** - True copy of the Office Memorandum No.CHN/551/14/2001/Vol.IV dated 29.8.2018 issued by the 3rd respondent.
- 5. Annexure A-1(e)** - True copy of the Office Memorandum No.CHN/551/14/2001/Vol.IV dated 29.8.2018 issued by the 3rd respondent.
- 6. Annexure A-1(f)** - True copy of the Office Memorandum No.CHN/551/14/2001/Vol.IV dated 29.8.2018 issued by the 3rd respondent.
- 7. Annexure A-1(g)** - True copy of the Office Memorandum No.CHN/551/14/2001/Vol.IV dated 29.8.2018 issued by the 3rd respondent.
- 8. Annexure A-1(h)** - True copy of the Office Memorandum No.CHN/551/14/2001/Vol.IV dated 29.8.2018 issued by the 3rd respondent.
- 9. Annexure A-2** - True copy of the order dated 8.2.2013 of this Hon'ble Tribunal in O.A.No.1027/2011.
- 10. Annexure A-3** - True copy of the judgment dated 9.7.2013 of the Hon'ble High Court.
- 11. Annexure A-4** - True copy of the judgment dated 11.1.2017 of the Hon'ble Supreme Court in SLP No.10058/2014.
- 12. Annexure A-5** - True copy of the Office Order No.CDR-II/441/37/2011 dated 31.10.2017 issued by the Deputy Passport Officer.
- 13. Annexure A-6** - True copy of the representation dated 12.3.2018 submitted before the 2nd respondent.
