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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 180/00603 of 2018

Monday, this the 11th day of November, 2019

CORAM

Hon'ble Mr. E.K.Bharat Bhushan, Administrative Member

Hon'ble Mr.Ashish Kalia, Judicial Member

Mrs.V.P.Sobha,
W/o C.J.Aloysious,
Aged 62 years,
MCM (P.P&CS) (Retd.)
Naval Ship Repair yard,
House No.X1/235A, ESI Road,
South Thamaraparambu, Cochin- 682 001. ... Applicant

(By Advocate Mr.C.S.G.Nair for Applicant)

Versus

1. The Union of India,
represented by the Secretary
to Government of India,
Ministry of Defence,
South Block,
New Delhi – 110 001.
2. The Flag Officer Commanding in Chief,
Southern Naval Command, Cochin- 682 004.
3. The Commodore Superintendant,
Naval Aircraft Yard,
Cochin – 682 004. Respondents

(By Advocate Shri C.P.Ravikumar, ACGSC for Respondents)

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This application having been heard on 7th November, 2019, the Tribunal on 11th November, 2019 delivered the following :

ORDER

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

OA No.603/2018 is filed by Smt.V.P.Sobha, retired MCM (P.P&CS), Southern Naval Command, Cochin, aggrieved by the inaction of the respondents to grant her either 3rd financial upgradation under MACP Scheme w.e.f. 18.02.2011 or to step up her pay on par with her junior, Smt.Alamelu. The reliefs sought in the OA are as follow:

- (i) To call for the records leading upto the issue of Annexure A25 and quash the same.
- (ii) To declare that the applicant is entitled for 2nd financial upgradation under ACP Scheme w.e.f. 18.2.2005 on completion of 24 years as per Annexure A6.
- (iii) To grant 2nd financial upgradation to the applicant under ACP Scheme w.e.f. 18.02.2005 on completion of 24 years as per Annexure A6.
- (iv) To revise the pay of the applicant w.e.f. 18.02.2005 and grant all consequential benefits including retirement benefits within a time frame.
- (v) Grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.
- (vi) Grant cost of this OA.

2. The applicant joined service as Progress Recorder on 18.2.1981 in the Base Repair Organisation of the Southern Naval Command on casual basis.

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The post was converted as Tradesman in 1995. Thereupon, she was exempted from appearing in the trade test as a onetime measure considering her length of service. She was promoted as Tradesman (PP&C) HS II w.e.f. 01.01.1996 and was transferred to the office of 3rd Respondent (Annexure A7). On submission of representation by the applicant for grant of 2nd financial upgradation under ACP Scheme, she was granted the same w.e.f. 23.11.2007 in the PayBand 1 with a grade pay of Rs.2400/- as per the CE list at Annexure A10.

3. The ACP Scheme envisages two financial upgradations on completion of 12 years and 24 years. The applicant has completed 24 years of service as on 18.02.2005, and became entitled for 2nd financial upgradation under ACP Scheme. The applicant claims that the grant of 2nd financial upgradation w.e.f. 23.11.2007 as per Annexure A10 is not correct and the effective date ought to have been 18.02.2005. The applicant was placed as MCM w.e.f. 01.04.2010 (Annexure A11).

4. The respondents issued a draft seniority list of PP&C Staff on 27.11.2011 (Annexure A12), in which the applicant is at Sl.No.4. In the seniority list it is seen that the applicant was granted 2nd financial upgradation under ACP w.e.f. 20.10.2005, whereas the applicant ought to have been granted w.e.f. 18.02.2005.

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5. The respondents issued a CE List dated 07.09.2011 (Annexure 14) cancelling CE list at Annexure A10 stating that the pay of the applicant is fixed at Rs.2800/- w.e.f. 01.01.2006 to 28.02.2010 and Rs.4200/- w.e.f. 01.03.2010 on promotion as MCM. The 2nd Respondent issued a draft seniority list as on 15.08.2011 of PP&C MCM, HS-I and HS II, in which the applicant is at Sl.No.1 in PP&C MCM cadre and 'Remarks' column noted that the applicant was absorbed on 21.11.1983 contrary to Annexure A6, which states the date as 18.02.1981. In the CE list issued on 24.01.2012 in which the pay of one Smt.M.M.Alamelu , PP&C (SK), junior to applicant is seen fixed at Rs.5300/- w.e.f. 18.05.2005 on grant of 2nd financial upgradation under ACP Scheme. Smt.Alamelu was also granted 3rd MACP w.e.f. 01.07.2011 and her pay was fixed at Rs.13,130 + Rs.4600. The applicant submitted a representation to the 3rd Respondent for grant of 3rd financial upgradation under MACP Scheme. The 3rd respondent has recommended the case of the applicant either for grant of 3rd financial upgradation w.e.f. 18.02.2011 or to step up the pay of the applicant on par with the pay of her junior, Smt.Alamelu (Annexure A19). The applicant submitted a representation for grant of 3rd financial upgradation under MACP Scheme (Annexure A20) and the same was granted w.e.f. 18.02.2011 (Annexure A20).

6. The applicant again submitted a representation seeking to antedate her 2nd financial upgradation from 20.10.2005 to 18.02.2005, to which the

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respondents informed that the casual service of Smt.Alamelu was regularised in pursuance to the order in OA No.548/2009 and being no stepping up of pay can be granted on par with the junior. The applicant sought information under RTI Act about the pay of the applicant and that of her junior, Smt.Alamelu. As per the RTI information as on 18.05.2005, the pay of the applicant was fixed in the pay scale of Rs.4000-6000 whereas the pay of Smt.Alamelu was fixed in the pay scale of Rs.5000-8000/-. Therefore, the applicant submits that she should have been granted the 2nd financial upgradation under ACP Scheme w.e.f. 18.02.2005 and 3rd financial upgradation under MACP Scheme w.e.f. 18.02.2011.

7. As grounds, the applicant submits that if Smt.Alamelu was regularised based on the order in OA No.548/2009 and the same law is equally applicable to the applicant also. There cannot be any discrimination which is in violation of Articles 14 and 16 of the Constitution of India.

8. The respondents have filed their reply statement disputing the contentions raised by the applicant and admitting the facts on record. The respondents submit that the reason for the applicant's junior Smt.Alamelu drawing more pay than her is due to implementation of 2nd ACP w.e.f. 18.05.2005, whereas the applicant was granted the benefit of 2nd ACP w.e.f. 20.10.2005, as she had qualified for promotion as Chargeman (PP&C) on the same date and her junior Smt.Alamelu had qualified for promotion to

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Chargeman (PP&C) w.e.f. 29.12.2006. However, Smt.Alamelu was granted the benefit of 2nd ACP on 18.05.2005 by applying relaxtion clause in accordance with MOD letter dated 05.02.2004, a copy of which is at Annexure R1. The respondents however admit that in case the provisions of MOD letter (Annexure R1) is made applicable , the 2nd ACP granted to the applicant would be antedated.

9. Heard Shri C.SG.Nair, learned Counsel for the applicant and Shri C.P.Ravikumar, learned ACGSC on behalf of the respondents. All pleadings and documents were examined. Considering the fact that if provisions of MOD letter (Annexure R1) is extended to the applicant, the 2nd ACP granted would be antedated w.e.f. 18.02.2005. It is declared, on the basis of the facts and pleadings made before us that the applicant is eligible for the same benefit. The respondents are directed to issue orders antedating the 2nd ACP granted to the applicant with all consequential benefits arising therefrom within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs..

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00603/2018

1. Annexure A1 - True copy of the Memo No.269/6/15 dt.17.10.1995 issued by the 3rd respondent.
2. Annexure A2 - True copy of the Memo No.266/6/19 dt.25.4.1997 issued by the 3rd respondent.
3. Annexure A3 - True copy of the letter No.1103/44/5 dated 28.10.1997 issued by the 2nd respondent.
4. Annexure A4 - True copy of the letter No.CP(NG)/2820 DATED 11.11.1997 issued by the Naval Headquarters.
5. Annexure A5 - True copy of the Order No.270/6/9 dated 02.04.2001.
6. Annexure A6 - True copy of the Letter No.277/6/3 dated 14.8.2001.
7. Annexure A7 - True copy of the Memo No.PA/03/5030/14 dated 31.10.2003 issued by the 3rd Respondent.
8. Annexure A8 - True copy of the representation dated 31.10.2006.
9. Annexure A9 - True copy of the CE list No.55/2007 issued on 14.5.2007.
10. Annexure A10 - True copy of the CE List No.3/2009.
11. Annexure A11 - True copy the Memo No.PA/03/5030/14 dated 13.04.2010 issued by the 3rd respondent.
12. Annexure A12 - True copy of the Draft Seniority List issued on 27.1.2011 by the 2nd respondent.
13. Annexure A13 - True copy of the CE list No.73/2011 dated 21.6.2011 issued by the 3rd respondent.
14. Annexure A14 - True copy of the CE list No.124/2011 dated 7.9.2011 issued by the 3rd respondent.
15. Annexure A15 - True copy of the Draft Seniority List of PP&C MCM, HS-I and HS II as on 15.8.2011 issued by the 2nd respondent.
16. Annexure A16 - True copy of the CE list No.9/2012 dated 24.01.2012 issued by the 3rd respondent.

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17. Annexure A17 - True copy of the representation dated 4.6.2012.
 18. Annexure A18 - True copy of the reminder dated 5.7.2012.
 19. Annexure A19 - True copy of the letter No.PA/03/5030/MACP dated 20.9.2013 addressed to the 2nd respondent by the 3rd respondent.
 20. Annexure A20 - True copy of the representation dated 11.8.2014.
 21. Annexure A21 - True copy of the CE list No.151/2014 dated 24.12.2014 issued by the 3rd respondent.
 22. Annexure A22 - True copy of the representation dated 28.04.2016.
 23. Annexure A23 - True copy of the representation dated 8.2.2018.
 24. Annexure A24 - True copy of the reminder dated 13.3.2018.
 25. Annexure A25 - True copy of the order No.CS 2765/34/1/MACP dated 30.04.2018 issued by the 2nd respondent.
 26. Annexure A26 - True copy of the application under the RTI Act dated 24.05.2018.
 27. Annexure A27 - True copy of the Letter No.PIO/130/18/VPS/6(I) dated 2.7.2018 issued by the 2nd respondent
 28. Annexure R1 - Copy of MoD letter MoD ID No.PC II 11(5)/99/D(Civ.I) dated 05.02.2004.
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