

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

OP (CAT) .No. 1194 of 2010 (Z)

AGAINST THE ORDER/JUDGMENT IN OA 124/2009 of CENTRAL ADMINISTRATIVE
TRIBUNAL,ERNAKULAM BENCH DATED 30-03-2010

PETITIONER(S) :

1. THE ADMINISTRATOR,
UNION TERRITORY OF LAKSHADWEEP, KAVARATTI.

2. THE SECRETARY,
DEPARTMENT OF EDUCATION
UNION TERRITORY OF LAKSHADWEEP, KAVARATTI.

BY ADV. SRI.S.RADHAKRISHNAN,SC,LAKSHADWEEP ADMN

RESPONDENT(S) :

1. P. MATHARSHA, S/O ELLACHETTA KOYAMMA HAJI,
AGED 59 YEARS, GOVERNMENT SENIOR
SECONDARY SCHOOL, AGATTI ISLAND,
UNION TERRITORY OF LAKSHADWEEP, PIN 682553
RESIDING AT PULINKIL HOUSE, AGATTI ISLAND
UNION TERRITORY OF LAKSHADWEEP.

2. C.K. HUSSAIN, S/O. CHERIYA KOYAKIDAVE,
AGED 40 YEARS, SPORTS BOY, DIRECTORATE OF
EDUCATION, KAVARATTI ISLAND
UNION TERRITORY OF LAKSHADWEEP, RESIDING AT
CHEKKARAKAKKADA HOUSE, ANDROTH ISLAND
UNION TERRITORY OF LAKSHADWEEP, PIN 682555

3. K.K. NALLAKOYA, S/O. KOYAMMA KOYA.A,
AGED 54, SPORTS BOY, RCSC (REGIONAL COACHING
SUB CENTRE), ANDROTH ISLAND
UNION TERRITORY OF LAKSHADWEEP, RESIDING AT
KARAKKADA HOUSE, ANDROTH ISLAND
UNION TERRITORY OF LAKSHADWEEP, PIN 68255

4. K. KADERKOYA, S/O. FAZAL.S.P, AGED 48,
GOVERNMENT SENIOR SECONDARY SCHOOL, KILTAN ISLAND,
UNION TERRITORY OF LAKSHADWEEP, RESIDING AT
KURIYATHIYODA HOUSE, KILTAN ISLAND
UNION TERRITORY OF LAKSHADWEEP, PIN - 682 558.

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5. B. MUSHTAFA, S/O.K.C. YOUSAF, AGED 48 YEARS,
NCC LASCAR, GOVERNMENT HIGH SCHOOL, ANDROTH ISLAND
UNION TERRITORY OF LAKSHADWEEP, RESIDING AT
BAPPOTHIYODA HOUSE, ANDROT ISLAND
UNION TERRITORY OF LAKSHADWEEP, PIN - 682 558.

6. K. KHALID, S/O.K.O.ABDRRAHMAN, AGED 60,
SPORTS BOY, DIRECTORATE OF SPORTS AND YOUTH AFFAIRS
KAVARATTI ISLAND, UNION TERRITORY OF LAKSHADWEEP
RESIDING AT KUNNINAMEL, KAVARATTI
UNION TERRITORY OF LAKSHADWEEP, PIN - 682 558.

7. A.P. MOHAMMED, S/O.B. KAMI, AGED 57, SPORTS BOT
DIRECTORATE OF SPORTS AND YOUTH AFFAIRS, KAVARATTI
UNION TERRITORY OF LAKSHADWEEP, PIN - 682 558.
RESIDING AT AYNAPURA HOUSE, KAVARATTI
UNION TERRITORY OF LAKSHADWEEP.

8. E.C. KAHDER, S/O.T.M.KUTTY, AGED 55,
NCC LASCAR, GSSS, KAVARATTI
UNION TERRITORY OF LAKSHADWEEP, RESIDING AT
ENTHIKECHETTA HOUSE, KAVARATTI
UNION TERRITORY OF LAKSHADWEEP, PIN - 682 555.

9. SIRAJ KOYA, S/O. ALIKOYA, AGED 57,
GOVERNMENT SENIOR SECONDARY SCHOOL, AMINI
UNION TERRITORY OF LAKSHADWEEP
RESIDING AT PONTINODA HOUSE, AGATTI ISLAND
UNION TERRITORY OF LAKSHADWEEP. PIN - 682 552.

10. P. HAMZAKOYA, S/O. KOYAMMA KOYA,
NCC LASCAR, GM GOVERNMENT SENIOR SECONDARY SCHOOL,
ANDROTT ISLAND,
UNION TERRITORY OF LAKSHADWEEP, PIN - 682 551.

11. B.K. MOHAMMED RAFAEEK, S/O.ASSAINAR.B,
AGED 36 YEARS, DR.K.K. MOHAMMED KOYA, GOVERNMENT
SENIOR SECONDARY SCHOOL, KALPENI
UNION TERRITORY OF LAKSHADWEEP, RESIDING AT
BAMMATHARAKKAD HOUSE, ANDROT ISLAND
UNION TERRITORY OF LAKSHADWEEP, PIN - 682 551

12. C. MUTHUKOYA, S/O.P. AHAMMED, AGED 49,
DIRECTORATE OF EDUCATION, KAVARATTI
RESIDING AT CHARITYTHODA HOUSE, KAVARATTI
UNION TERRITORY OF LAKSHADWEEP, PIN 682555.

13. MARALPULLA, S/O.M.P. KHADER, AGED 54,
SPORTS BOY, DR.K.K. MOHAMMED KOYA
GOVERNMENT SENIOR SECONDARY SCHOOL, KALPENI
UNION TERRITORY OF LAKSHADWEEP, PIN 682557

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14. UNION OF INDIA, REPRESENTED BY ITS
SECRETARY TO DEPARTMENT OF PERSONNEL
PUBLIC GRIEVANCES AND PENSIONS, NEW DELHI, PIN 110001

R,R1-13 BY ADV. SRI.M.R.HARIRAJ
ADV. SRI.P.A.KUMARAN
ADV. SRI.SURAJ.S
ADV. SMT.VINEETHA B.
ADV. SRI.NIRMAL V NAIR
R,R14 SRI. SUVIN R. MENOR, CGC

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 29-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (CAT) NO. 1194 OF 2010

APPENDIX

APPELLANT'S EXHIBITS :

EXHIBIT P1 : A TRUE COPY OF THE O.A. NO. 124 OF 2009 FILED BY THE RESPONDENT.

EXHIBIT P2 : A TRUE COPY OF THE REPLY STATEMENT FILED BY THE PETITIONERS.

EXHIBIT P3 : A TRUE COPY OF THE REJOINDER FILED BY THE PARTY RESPONDENTS.

EXHIBIT P4 : A TRUE COPY OF THE ADDITIONAL REPLY STATEMENT FILED BY THE PETITIONERS.

EXHIBIT P5 : A TRUE COPY OF THE ORDER PASSED BY THE CAT ERNAKULAM BENCH IN O.A. NO. 124 OF 2009 DATED 30.03.2010

/TRUE COPY/

P.A. TO JUDGE

P.R. RAMACHANDRA MENON

&

BABU MATHEW P JOSEPH, JJ.

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O.P. (CAT) No. 1194 of 2010

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Dated, this the 29th day of June, 2015

JUDGMENT

Babu Mathew P Joseph, J

The respondents 1 to 13 in this original petition had filed Ext.P1 O.A. No. 124 of 2009 before the Central Administrative Tribunal, Ernakulam Bench, for declaring that the Sports Boys/NCC Lascars are entitled to be granted first and second ACP placements to the scales of Rs.3200 - 4000 and Rs.4000 - 6000 respectively from the dates on which they are entitled to such placements and for other reliefs. The learned CAT considered the matter in detail and found that Sports Boys are entitled to such scales and granted opportunity to the NCC Lascars for preferring representations before the establishment, claiming such benefits. Aggrieved by the order so passed by the CAT, the establishment has preferred this original petition.

2. Heard the learned standing counsel appearing for the petitioners. The learned counsel appearing for the respondents 1 to 13 and the learned Central Government Counsel appearing for the 14th respondent.

3. The NCC Lascars and Sports Boys belong to Education Department under the Lakshadweep Administration. The Lakshadweep Administration is functioning under the Ministry of Home Affairs, Government of India. The ACP Scheme for financial upgradation has been implemented w.e.f. 09.08.1999. Under that Scheme, after completing 12 years, the employees will be entitled to first financial upgradation, and, after completing 24 years, they will be entitled to second financial upgradation, provided the employees were stagnated during the said periods without any promotion in the hierarchy. The posts of NCC Lascars and Sports Boys are isolated posts without any avenues for promotion. These posts and the post of Fisherman in the Education Department and in the Fisheries Department under the same Ministry are on same scale of pay namely, Rs.2550 - 3200. This is the scale one. Fishermen in the Education Department have one promotion post namely, Pablo Boat Driver and Fishermen in the Fisheries Department have two promotion posts namely, Senior Fisherman and Fisherman Expert. Annexure R3(b) in Ext. P2 governs the grant of ACP scales to different categories of posts. Clause 7 of this

document says that financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher pay scale as indicated in Annexure II. Annexure II shows 18 different scales namely, S1 to S24.

4. The Government of India have issued Annexure A2 in Ext. P1 clarifications in regard to the implementation of ACP Scheme. Clarification 10 deals with the point of doubt in respect of isolated posts and regarding the implementation of ACP Scheme in respect of those posts . The clarification reads as follows :

"For isolated posts, the scales of pay for ACPS shall be the same as those applicable for similar posts in the same Ministry/Department/Cadre except where the Pay Commission has recommended specific pay-scales for mobility under ACPS. Such specific cases may be examined by respective Ministries/Departments in consultation with the Department of Personnel and Training. In the case of remaining isolated posts, the

pay scales contained in Annexure-II of the Office Memorandum dated August 9, 1999 (ACPS) shall apply.”

Therefore, in the case of isolated posts, the scales of pay for ACPS shall be the same as those applicable to similar posts in the same Ministry/Department/Cadre except where the Pay Commission has recommended specific pay scales for mobility under ACPS. It is also provided in the clarification that such specific cases mentioned may be examined by the respective Ministries/Departments in consultation with the Department of Personnel and Training. This provision is made only in respect of specific pay scales recommended by the Pay Commission and not in respect of isolated posts, for which scales of pay of ACPS are prescribed to be the same as those applicable to similar posts in the same Ministry/Department/Cadre.

5. The establishment took a view interpreting clause 7 of the ACP Scheme that in the case of isolated posts, financial upgradation can be given only to the next higher scale as noted in Annexure II earlier mentioned. If that be so, the post of NCC Lascar/Sports Boy in S1 pay scale of Rs.2550 - 3200 will be placed

only in S2 pay scale of Rs. 2610 - 3540 while granting first ACP benefit. After completion of 24 years of service, they will be placed from S2 to S3 scale of Rs. 2650 - 4000. But, in the case of posts like Fisherman, the scale to which they will be placed is entirely different. Since they have promotion chances, their next higher pay scale will be what applicable to next promotion post on completion of 12 years service and after 24 years of service they will be placed in the next scale applicable to the next promotion post. By implementing the Scheme in this way, the Fisherman who is in S1 scale of pay of Rs.2550 - 3200 will be eligible to be placed in S6 scale of pay of Rs.3200 - 4900, as it is the scale applicable to the next promotion post of Pablo Boat Driver or Senior Fisherman and on completion of 24 years of service fisherman will be placed granting benefit of ACP Scheme in S7 scale of pay of Rs.4000 - 6000 referable to the next promotion post of Fisherman Expert. The grievance of the respondents 1 to 13 is that the post of Fisherman and the posts of NCC Lascar and Sports Boy carry same scale of pay namely, Rs.2550 - 3200. But, in the case of Fishermen they are entitled to a frog jump from scale S1 to scale S6 and thereafter to scale S7 on the basis of the interpretation of

Clause 7 of Annexure R3(b) in Ext. P2. Therefore, the first respondent in this original petition, who is a Sports Boy, challenged the stand of the establishment by filing O.A. No. 871 of 2003 before the Central Administrative Tribunal, and claimed that he is also entitled to similar treatment given to Fisherman in the matter of scales of pay, while implementing ACPS.

6. The learned Tribunal found that the qualification prescribed for recruitment to the post of Fisherman and Sports Boy is one and the same, namely, 4th standard. Both these posts belong to Group D. The pay scales of both these posts are one and the same. In that way considering the matter in detail, the Tribunal arrived at the conclusion that the post of Sports Boy and the post of Fisherman are similar. But, the Tribunal, based on clarification 10 in respect of implementation of ACPS mentioned earlier, directed the establishment to refer the matter to the Department of Personnel for their consideration and pass suitable orders in that regard. Also observed that in case there were other group D posts for which two ACP benefits have been extended, comparison can be made with reference to those cases and the matter shall be placed before the Ministry of Personnel for their

consideration.

7. Thereafter, the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel, Government of India, have considered the matter as directed by the Tribunal and issued Annexure A4 order in which they found that the posts of Sports Boy and Fisherman are not similar and hence the benefits available to the Fisherman cannot be granted to Sports Boy. Based on this order, the establishment passed Annexure A1 order dated 08.12.2008 rejecting the claim of Sports Boy for scales of pay granted to Fishermen. Challenging that order, the respondents 1 to 13 preferred O.A. No. 124 of 2009 before the CAT. The CAT considered the matter in the light of the findings entered by it earlier in O.A. No.871 of 2003 and came to the conclusion that the posts of Sports Boy and Fisherman are similar and hence Sports Boy is also entitled to the benefits granted to Fisherman under the ACP Scheme.

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

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 4th 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.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-

**BABU MATHEW P. JOSEPH,
JUDGE**

kmd