

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Petition No.15654 of 2016
MP No.1 of 2013

1.Director General
Fishery Survey of India
Botawala Chambers
Sir P.M.Road
Mumbai.

2.The Zonal Director
Fishery Survey of India
Fishing Harbour Complex
Royapuram, Chennai - 600 013.

.... Petitioners

vs.

1.J.Crispin Cardoza

2.The Registrar
Central Administrative Tribunal
Chennai - 104.

.... Respondents

WRIT Petition filed under Article 226 of the Constitution of India,
to issue a Writ of Certiorari calling for the records of the second
respondent herein culminating with its order dated 06.11.2012 passed
in O.A.No.553/2011 and quash the same.

For Petitioners : Mr.A.Kumaraguru

For Respondents : Mr.S.Ratnasamy for R1

ORDER

(Order of this Court was made by **S.MANIKUMAR, J**)

Challenge in this writ petition is to an order dated 06.11.2012 made in Original Application No.553/2011, by which, the Central Administrative Tribunal, Chennai Bench, has directed the writ petitioners to grant Assured Career Progression (in short ACP) to the first respondent, in the pay scale of 4500 - 7000, with effect from 09.08.1999, with all consequential benefits. The writ petitioners are further directed to pass such an order, within a period of six weeks from the date of receipt of a copy of the said order.

2. Facts leading to the writ petition are that the first respondent was initially appointed to the post of Cook with effect from 19.07.1972 (Group 'C' Non-Ministerial) in the then pay scale of Rs.100-5-130 by direct recruitment. Subsequently, he was promoted to the post of Senior Deckhand-cum-cook with effect from 09.10.1985 in the pay scale of Rs.290-6-326-8-350-EB-8-390-10-400 (Revised Pay Scale w.e.f. 01.01.1986 was Rs.975-25-1500-EB-30-1540/-). The said scale of pay

was subsequently revised as Rs.3,200-85-4900/-. According to the first respondent, he was stagnated at the maximum of Rs.4900/- and granted first, second and third stagnation increments of Rs.85/- each with effect from 01.04.2000.

3. The first respondent retired from service on 31.05.2007 from the Office of the second petitioner. At the time of retirement, his scale of pay was Rs.3,200-85-4900. The first respondent got only one promotion during his entire service from the post of Cook to the post of Senior Deckhand cum Cook. Therefore, the first respondent claimed that he is entitled to second ACP with effect from 09.08.1999 in the scale of pay of Rs.4000-100-6000/- as per the scheme dated 09.08.1999.

4. The Zonal Director, Fishery Survey of India, Fishing Harbour Complex, Chennai 600 013, the second writ petitioner herein, passed final orders on 17.02.2011, rejecting the first respondent's representation seeking second financial upgradation. Hence, the first respondent has filed the Original Application to quash the order of the second petitioner in F.30-1/2009 Estt. Vol.II dated 17.02.2011 and prayed for a direction to the petitioners to grant second financial

upgradation to him in the scale of pay of Rs.4000-100-6000 (S-7) with effect from 09.08.1999 with all consequential benefits.

5. The second petitioner herein/second respondent in OA, has filed a reply statement before the Central Administrative Tribunal, Chennai Bench, denying the averments made by the 1st respondent. The second petitioner has contended that the first respondent/applicant in OA, has retired from service on 31.05.2007. ACP Scheme, 1999 came into force with effect from 09.08.1999. The representation of the first respondent herein for second financial upgradation was made on 04.04.2006. The position regarding the first respondent's ineligibility for second financial upgradation, either ACP Scheme or MACP scheme was intimated to him on 17.02.2011.

6. It is the submission of the the second petitioner that the post of Senior Deckhand-cum-Cook and Senior Deckhand are in the same pay scale of Rs.975-1540 and hence, posting of the Senior Deckhand cum Cook as Senior Dekhand on absorption basis was not treated as promotion. The first respondent availed only one promotion i.e. from the post of Cook to the post of Senior Deckhand-cum-Cook/Senior Deckhand.

7. It is the further submission of the second petitioner that in the year 1999, Government of India, have introduced a scheme, namely, Assured Career Progression (ACP), by which, employees were declared eligible for two financial upgradations, one, on completion of 12 years of regular working as Senior Deckhand Cum Cook and the other, on completion of 24 years of regular service, if such employees did not avail of vacancy based promotion. The 2nd petitioner has further submitted that the same Departmental Promotion Committee, which considers regular Departmental Promotion, also considers the case under ACP scheme. He further submitted that if a post has a promotional avenue and the employees holding the feeder post do not fulfill the requirements of the recruitment rules for promotion to the higher post, such employees shall not be granted financial upgradation, even if they complete 12 years or 24 years of service as the case may be.

8. It is the further submission of the second petitioner that the Government of India introduced the Assured Career Progression Scheme (ACPS) with effect from 09.08.1999 vide DOPTs OM No.35034/1/97 - Estt(D) dated 09.08.1999. The criteria to be applied for allowing financial upgradation under the said ACP Scheme are,

- 1st Criterion : First financial upgradation on completion of 12 years of regular service and 2nd financial upgradation on completion of 24 years of regular service.
- 2nd Criterion : The number of financial upgradations to be granted shall be counted against the number of regular promotions availed.
- 3rd Criterion : Wherever promotional avenues are available in the cadre, the employees should fulfill the normal promotional norms like benchmark, departmental examinations, etc.

9. The 2nd respondent has further submitted that as per the recruitment rules for the post of Bosun (certified), Senior Deckhands with 3 years of service are eligible for promotion provided they possess the certificate of competency, as Fishing II hand. The first respondent, while fulfilling the first criteria for the second financial upgradation under the ACP Scheme, having completed 24 years of regular service prior to 09.08.1999 and having availed one promotion during the said period, insofar as the number of years of qualifying service is concerned, did not fulfill the third criteria as he did not possess the Certificate of Competency as Fishing II hand. Therefore, he was not eligible for promotion for not possessing the essential qualification and hence, not eligible for the financial upgradation also, under the ACP scheme, because the post of Senior Deckhand has promotional

channel, unlike an isolated post. It is the further submission of the second petitioner that DOPT has also clarified against the point of doubt No.16, vide O.M.No.35034/1/97-Estt(D) (Vol.IV), dated 10.02.2000 that all promotion norms have to be fulfilled for upgradation under the scheme. As per the Scheme (Condition No.6), all promotion norms have to be fulfilled for upgradation. As such, no upgradation shall be allowed, if an employee fails to qualify the departmental/skill test prescribed for the purpose of regular promotion. It is the further submission of the second petitioner that since the first respondent did not possess the essential qualification as prescribed for the promotional post of Bosun (certified), he was not eligible for either vacancy based promotion or second financial upgradation. For the abovesaid reasons, the second petitioner/second respondent prayed for dismissal of the Original Application, with costs.

10. Concurring with the submissions of the first respondent, the Central Administrative Tribunal, Chennai Bench, passed an order in O.A.No.553 of 2011, dated 6.11.2012. Operative portion of the same reads as follows:

"9. For the aforesaid reasons we are convinced that the applicant has made out a case for the grant of relief claimed in the OA. We therefore set aside the impugned order dated 17.02.2011 and direct the first and the second respondent to grant ACP to the applicant in the pay scale of 4500 -7000 with effect from 09.08.1999 with all consequential benefits. The respondents are directed to pass an appropriate order on the above fact within a period of 6 weeks from the date of receipt of copy of this order.

OA is allowed accordingly. No order as to costs."

Aggrieved by the order made in O.A.No.553/2011, dated 06.11.2012, instant writ petition has been filed by the petitioners.

11. Assailing the correctness of the abovesaid order, Mr.A.Kumaraguru, learned counsel for the petitioners submitted that the Tribunal has failed to consider that as per the Deep Sea and Offshore Fishing Stations (Recruitment to Class III and Class IV posts) Rules, for the post of Bosun (certified), the essential qualification is certificate of competency, in fishing second hand issued by Mercantile Marine Department.

12. Inviting the attention of this Court to Clause 4 to Annexure-I, dealing with the conditions of grant of benefits under the

Assured Career Progression Scheme for the Central Government Civilian Employees, learned counsel for the petitioners submitted 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 first financial upgradation, subject to fulfilment of the prescribed conditions.

13. Learned counsel for the petitioners further submitted that as per Clause 6 of the abovesaid Annexure, the 1st respondent has to satisfy the fulfilment of normal promotion norms (benchmark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc.,) for grant of financial upgradation. According to him, the 1st respondent does not possess the certificate of competency, as fishing second hand and therefore, not eligible for promotion to the said post. As he did not possess the essential qualification, he is also not eligible for financial upgradation, under the ACP scheme.

14. Learned counsel for the petitioners further submitted that DoPT, vide Official Memorandum, dated 10.02.2000, has clarified that promotional norms have to be fulfilled for upgradation, under the

Scheme. He further submitted that the Tribunal has failed to consider the abovesaid aspects.

15. Per contra, Mr.S.Retnaswamy, learned counsel for the 1st respondent submitted that the reason for rejecting upgradation, was that as per the amended recruitment rules for the post of Bosun (Uncertified), as notified on 27.10.2007, the Senior Deckhand and Senior Deckhand-cum-Cook, who completed 10 years of regular service in the grade, are eligible for promotion to the post of Bosun (Uncertified), in the pay scale of Rs.4500-125-7000/- or for financial upgradation in the pay scale of Rs.4500-125-7000/- from 27.10.2007 or after, as per the eligibility and because the 1st respondent retired from service on 31.05.2007, before the amended recruitment rules, was not eligible for financial upgradation. According to him, the Tribunal has considered the reasons assigned by the Department, as not tenable. He also submitted that the well considered order of the Tribunal, does not require any interference.

Heard the learned counsel appearing for the parties and perused the materials available on record.

16. The first respondent has been appointed as Cook on 19.07.1972 and subsequently, promoted to the post of Senior Deckhand-cum-Cook, with effect from 09.10.1985. Senior Deckhand-cum-Cook and Senior Deckhand were fixed with the same scale of pay of Rs.290-6-326-8-350-EB-8-390-10-400 (Revised Pay Scale w.e.f. 01.01.1986 was Rs.975-25-1500-EB-30-1540/-). Government of India have introduced Assured Career Progression Scheme for the Central Government civilian Employees, vide Government of India Official Memorandum No.35034/1/97-Estt.(D), dated 09.08.1999.

17. As per the abovesaid scheme, the Fifth Central Pay Commission in its Report has made certain recommendations, relating to Assured Career Progression (ACP) Scheme for the Central Government civilian employees in all the Ministries/Departments. Government of India have stated that ACP Scheme needs to be viewed as a 'Safety Net' to deal with the problem of genuine stagnation and hardship faced by the employees, due to lack of adequate promotional avenues. After careful consideration, Government of India have decided to introduce ACP Scheme, as recommended by the Fifth Central Pay Commission with certain modifications. Insofar as Groups 'B', 'C' and 'D' Services/Posts and Isolated Posts in Group 'A', 'B', 'C'

and 'D' Categories, is concurred, the ACP scheme is as follows:

"3.1 While in respect of these categories also promotion shall continue to be duly earned, it is proposed to adopt the ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Keeping in view all relevant factors, it has, therefore, been decided to grant two financial upgradations [as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 (in relation to Group 'C' and 'D' employees) entered into with the Staff Side of the National Council (JCM)] under the ACP Scheme to Group 'B', 'C' and 'D' employees on completion of 12 years and 24 years (subject to condition No.4 in Annexure-I) of regular service respectively. Isolated posts in Group 'A', 'B', 'C' and 'D' categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees (including those with temporary status), ad-hoc and contract employees shall not qualify for benefits under the aforesaid Scheme. Grant of financial upgradations under the ACP Scheme shall, however, be subject to the conditions mentioned in Annexure-I.

3.2 Regular Service for the purpose of the ACP Scheme shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant Recruitment/Service Rules.

4. Introduction of the ACP Scheme should, however, in no case affect the normal (regular) promotional avenues available on the basis of vacancies. Attempts needed to improve promotion prospects in organisations/cadres on functional grounds by way of organisational study, cadre reviews, etc as per prescribed norms should not be given up on the ground that the ACP Scheme has been introduced.

5. Vacancy based regular promotions, as distinct from financial upgradation under the ACP Scheme, shall continue to be granted after due screening by a regular Departmental Promotion Committee as per relevant rules/guidelines."

18. Annexure-I deals with the conditions for grant of benefits under ACP Scheme. Conditions 4 and 6 for grant of benefits are as follows:

"4. 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 first 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.

6. Fulfillment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc) shall be ensured for grant of benefits under the ACP Scheme."

19. Reading of the above makes it clear that for financial upgradation, under the ACP scheme, one has to satisfy the prescribed conditions for promotion. Financial upgradation is given, taking note of the acute stagnation and hardship faced by the employee, due to the lack of adequate promotional avenues. On the facts and circumstances, it cannot be contended that there is a lack of promotional avenue. Post of Bosun (Uncertified) is a promotional post.

20. As per the ACP Scheme, the criteria to be applied for

upgradation are,

(i) First financial upgradation on completion of 12 years of regular service and 2nd financial upgradation on completion of 24 years of regular service.

(ii) The number of financial upgradations to be granted shall be counted against the number of regular promotions availed.

(iii) Wherever promotional avenues are available in the cadre, the employees should fulfill the normal promotional norms like benchmark, departmental examinations, etc.

21. According to the writ petitioners, as against the point of doubt No.16, raised by the Department, ie., "whether the relevant recruitment/service rules prescribe departmental examination/skill test for vacant based promotion and whether the same should be insisted for upgradation under ACPS.", the DOPT, vide O.M.No.35034/1/97-Estt(D) (Vol.IV), dated 10.02.2000, has clarified that as per the Scheme (Condition No.6), all the promotion norms have to be fulfilled for upgradation under the Scheme and as such, no upgradation shall be allowed, if an employee fails to qualify departmental/skill test prescribed for the purpose of regular promotion.

22. As per the recruitment rules, for the post of Bosun

(Certified), the essential qualification is a certificate of competency as fishing second hand issued by the Mercantile Marine Department. The said post has to be filled up 100% by promotion, failing which, by direct recruitment. The 1st respondent has been promoted as Senior Deckhand-cum-cook, with effect from 09.10.1985, in the pay scale of Rs.290-6-326-8-350-EB-8-390-10-400 (Revised Pay Scale w.e.f. 01.01.1986 was Rs.975-25-1500-EB-30-1540/-) and subsequently, re-designated as Senior Deckhand and lateron, his pay has been revised as Rs.3,200-85-4900/-, as per the Vth Pay Commission Recommendations.

23. Material on record discloses that the 1st respondent was given only one promotion. While he was working as Senior Deckhand in 1999, his next promotional avenue to the higher post was Bosun (Certified), for which, one has to possess, (i) Bosun (uncertified), Senior Deckhand, Senior Deckhand-cum-Cook, Senior Deckhand-cum-Greaser, Senior Deckhand-cum-Inland Master with three years' service in the respective grades and (ii) Certificate of competency as fishing second hand issued by Mercantile Marine Department. Though the 1st respondent has completed 24 years of service in the year 1999, he was not eligible for promotion, as he did not possess the certificate of competency as fishing second hand issued by Mercantile Marine

Department.

24. As per Conditions 4 and 6 in Annexure-I, for grant of benefits under ACP scheme for the Central Government Civilian Employees, he is not eligible for financial upgradation also. When the first respondent did not possess the essential qualification, the Zonal Director, Fishery Survey of India, Chennai, 2nd respondent herein, seemed to have considered the qualification for the post of Bosun (Uncertified), based on the notification issued on 27.10.2007 and vide order, dated 17.02.2011, rejected the case of the 1st respondent. The case of the 1st respondent ought to have been considered, as per the Scheme, 1999 read with the Recruitment Rules.

25. As rightly contended by the writ petitioners, the first respondent, who does not satisfy the essential qualifications, prescribed for the post of Boston (Certified), is not eligible for the vacancy based promotion or second financial upgradation, under the ACP scheme, with effect from 09.08.1999. For the reasons, stated supra, the order made in O.A.No.553/2011, dated 06.11.2012, requires interference. Accordingly, it is set aside.

S.MANIKUMAR, J.
AND
N.AUTHINATHAN, J.

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28. Hence, the Writ Petition is allowed. No costs.
Consequently, connected Miscellaneous Petition is also closed.

(S.M.K., J.) (N.A.N., J.)
03.01.2017

Internet : Yes/No
Index : Yes/No
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To

The Registrar
Central Administrative Tribunal
Chennai - 104.

W.P.No.15654 of 2013

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