



2023/KER/84079

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

FRIDAY, THE 22ND DAY OF DECEMBER 2023 / 1ST POU SHA, 1945

OP (CAT) NO. 62 OF 2022

AGAINST THE ORDER OA 740/2016 OF CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM BENCH

PETITIONER/S:

- 1 UNION OF INDIA ,
REPRESENTED BY ITS SECRETARY, MINISTRY OF AGRICULTURE,
ANIMAL HUSBANDRY, DAIRYING, NEW DELHI -110001.
PRESENTLY RENAMED AS MINISTRY OF FISHERIES, ANIMAL
HUSBANDRY AND DAIRYING, DEPARTMENT OF FISHERIES, NEW
DELHI-110 001.
- 2 THE DIRECTOR GENERAL,
FISHERY SURVEY OF INDIA, BOTAWALA CHAMBERS, MUMBAI -
400001, PRESENTLY SHIFTED TO PLOT NO. 24, UNIT NO. 12,
SASSOON DOCK, COLABA, MUMBAI-400005.



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3 THE ZONAL DIRECTOR,
FISHERY SURVEY OF INDIA, KOCHANGADI, COCHIN -682005.

BY ADV S.MANU, DSGI

ADV K.S. PRENJITH KUMAR CGC

RESPONDENT/S:

P.K.SANTHOSH KUMAR,
AGED 59 YEARS

BY ADV C.S.GOPALAKRISHNAN NAIR

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 8/11/2023, THE
COURT ON 22/12/2023 DELIVERED THE FOLLOWING:



J U D G M E N T

“C.R.”

A. Muhamed Mustaque, J.

The Union of India, the petitioner in this original petition, challenges an order of the Central Administrative Tribunal (for short “CAT”). The respondent approached CAT for a declaration that he is entitled to 2nd financial upgradation under the Assured Career Progression Scheme (for short “ACP Scheme”) in the pay scale of Bosun with effect from 18/6/2006 and to 3rd financial upgradation under the Modified Assured Career Progression Scheme (for short, the “MACP Scheme”) with effect from 18/6/2012. This has been allowed.

2. The respondent applicant entered service as a Cook in the office of the Deputy Director, Cochin, based on the Exploratory Fisheries Project, Kochi, on 18/6/1982. He was appointed as a Junior Deckhand on regular basis with effect from 7/9/1993. The respondent, thereafter, was promoted as Senior Deckhand. According to the applicant, on completion of 24 years of service, he was eligible for the 2nd financial upgradation with effect from 18/6/2006. The appellant was given only 2nd financial upgradation



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with effect from 27/10/2007 in the scale of Bosun (uncertified). The post of Bosun (uncertified) was created with effect from 27/10/2007. The applicant also had a case that he had completed 30 years of service on 17/6/2012 and that he is entitled for the 3rd financial upgradation under the MACP Scheme with effect from 18/06/2012.

3. The official respondent contended that the applicant was appointed as a Cook only on 18/06/1982 and was regularised with effect from 16/02/1983 and that the *ad hoc* service rendered between 18/06/1982 to 15/02/1983 cannot be reckoned for financial upgradation. The applicant was given the second financial upgradation under the ACP scheme in Bosun (uncertified) with effect from 27/10/2007, and the 3rd financial upgradation under the MACP Scheme on completion of 30 years, with effect from 16/2/2013.

4. There are two points to be considered; whether the applicant is entitled to the pay attached to Bosun (certified) and; whether, he is entitled to 3rd financial upgradation under the MACP Scheme with effect from 17/06/2012. As per the Recruitment Rules, the following qualifications are stipulated for the post of Bosun (certified):



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- (i) 12th standard pass or equivalent; and
- (ii) Possession of a certificate of competency as Mate Fishery Vessel issued by Merchantile Marine Department(MMD)

5. There is no dispute that the applicant did not possess the necessary qualifications for the post of Bosun (certified). Annexure I to office memorandum dated 9/8/1999 [No 35034/1/97-Esst(D)], condition No.6 - conditions for grant of benefits under the ACP Scheme provides that the employee must fulfil normal promotional norms for performance of duties in the promotional post, for the grant of financial upgradation. Condition No 6 under the above-mentioned scheme reads as:

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;

6. Consequent upon the introduction of the ACP Scheme, clarifications have been sought by various Ministries/Departments about certain issues in connection with the implementation of the



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ACP Scheme. The Office Memorandum dated 10/2/2000 (F.No.35034/1/97-Estt (D)(Vol.IV)) issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) provides that the ACP Scheme should be implemented in accordance with the clarifications (Annexure).

7. Clarification No.53 vide office memorandum dated 10.2.2000 issued by the Department of Personnel and Training reads as under:

Si no	Point of doubt	Clarification
53.	If for promotion on regular basis, an employee has to possess a higher/ additional qualification, will it be necessary to insist on possession of these qualifications even while considering grant of	In terms of condition No. 6 of, Annexure-I to DoP&T O.M. dated 9.8.1999, only those employees who fulfill all promotional norms are eligible to be considered for benefit under ACPS. Therefore, various stipulations and conditions



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	financial upgradation under the ACPS?	specified in the recruitment rules for promotion to the next higher grade, including the higher/additional educational qualification, if prescribed, would need to be met even for consideration under ACPS.
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8. CAT relied on the Apex Court Judgment in **M.N Raghunatha Kurup & Ors v Union of India & Ors [Civil Appeal No.3562 of 2007]** to hold that for claiming benefit under the ACP Scheme, the employee need not possess the educational qualification for promotion. It is to be noted that in **M.N. Raghunatha** case (*supra*), the Hon'ble Supreme Court held that in the absence of such stipulation in the ACP Scheme, such stipulation shall not be insisted for claiming the benefit. In this case, we specifically note that the ACP Scheme itself stipulates that the employee must fulfil normal promotional norms. In such circumstances, without fulfilling the educational qualifications prescribed for the post of Bosun



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(Certified), the applicant is not entitled to claim promotion to the post of Bosun (certified).

9. There is no dispute to the fact that the applicant's service was regularised only with effect from 16.02.1983. As seen from the ACP and the MACP Scheme, *ad hoc* service cannot be counted for financial upgradation. ACP Scheme envisages two financial upgradation on completion of 12 years and 24 years of service subject to conditions of regular service. Para 3.1 of the ACP scheme provides that certain categories of employees such as casual employees, *ad hoc* and contract employees shall not qualify for benefits under the ACP Scheme. Para 3.1 of the office memorandum dated 09/08/1999 [no. 35034/1/97-Esst (D)] specifying the ACP Scheme is reproduced below:

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



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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](#).

10. Similarly, the MACP Scheme also grants financial upgradation at intervals of 10, 20 and 30 years. Under this Scheme also, employees appointed on *ad hoc* basis are excluded from such benefits. Relevant part of the MACP Scheme is provided below:

3. The Scheme would be known as "MODIFIED ASSURED CAREER PROGRESSION. SCHEME (MACPS) FOR THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES. This Scheme is in supersession of previous ACP Scheme and clarifications issued there under and shall be applicable to all regularly appointed Group "A", "B", and "C" Central Government Civilian Employees except officers of the Organised Group "A" Service. The status of Group "0" employees would cease on their completion of prescribed training, as recommended by the Sixth Central Pay Commission and would be treated as Group "C" employees. **Casual employees, including those granted 'temporary status' and employees appointed in the Government only on adhoc or contract basis shall not qualify for benefits under the aforesaid Scheme.** The details of the MACP Scheme and conditions for grant of the financial upgradation under the Scheme are given in Annexure-1.

The Tribunal proceeded to reckon initial appointment on *ad hoc* basis for calculating financial upgradation under the MACP



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Scheme. In such circumstances, we are of the view that the Tribunal committed error in allowing the application. Accordingly, the impugned order is set aside. The original petition is allowed.

Sd/-

A.MUHAMED MUSTAQUE , JUDGE

Sd/-

SHOBA ANNAMMA EAPEN, JUDGE

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APPENDIX OF OP (CAT) 62/2022

PETITIONER ANNEXURES

Annexure 11 ANNEXURE A11. TRUE COPY OF THE MEMO NO.F.8-124/2016 DT.22.6.2016 ISSUED BY THE 3RD RESPONDENT IN OA

Annexure A1 TRUE COPY OF THE MEMO NO.F.7-4(4)81 DT: 17.5.1982

Annexure A2 TRUE COPY OF THE OFFICE ORDER NO.F.NO. 1 - 26/92.E.I DT: 14.9.1993

Annexure A3 TRUE COPY OF THE OFFICE ORDER NO.F.8-2/96 VOL.II DT:6.10.1997

Annexure A4 TRUE COPY OF THE OM.NO.35034/1/97/ ESTT (D) DT:9.8.1999

Annexure A5 TRUE COPY OF THE OFFICE ORDER NO. F. 1-1/2008 E.II DT: 23.1.2012

Annexure A6 TRUE COPY OF THE RECRUITMENT RULE FOR THE POST OF BOSUN (UNCERTIFIED) NOTIFICATION DATED 24.04.2009

Annexure A7 TRUE COPY OF THE JUDGMENT OF THE HON'BLE SUPREME COURT IN CIVIL APPEAL NO.3562/2007

Annexure A8 TRUE COPY OF THE MACP SCHEME OM NO.3504/3/2008. ESTT.(D)DT:19.5.2009

Annexure A9 TRUE COPY OF THE REPRESENTATION DT: 11.1.2016

Annexure A10 TRUE COPY OF REPRESENTATION DT.9.6.2016

Annexure R1(a) TRUE COPY OF THE RECRUITMENT RULES OF THE POST OF BOSUN (CERTIFIED)

Annexure R1 (b) TRUE COPY OF THE ACP SCHEME

Annexure R1 (c) TRUE COPY OF THE ORDER DATED 17.09.2014 GRANTING 3RD MACP

Exhibit P1 TRUE COPY OF THE OA NO. 740/2016 FILED BY THE RESPONDENT HEREIN/APPLICANT IN THE OA BEFORE THE CAT, ERNAKULAM BENCH

Exhibit P2 TRUE COPY OF REPLY STATEMENT FILED ON BEHALF OF THE PETITIONERS HEREIN/RESPONDENT DATED 22.02.2017

Exhibit P3 A TRUE COPY OF THE ORDER DATED 25.02.2022 OF THE LEARNED CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH IN OA NO. 740/2016

Exhibit P4 A TRUE COPY OF THE JUDGMENT DATED 16-08-2017 IN WP (C) NO. 8999 OF 2016 OF THE HON'BLE HIGH COURT OF DELHI



RESPONDENT EXHIBITS

Exhibit R(3)	True copy of the order No.F.1-6/2012 E.II dt:7.10.2022 issued by the 2nd petitioner
Exhibit R(4)	True copy of the order No.F.1-7/2022 E.II dt:7.10.2022 issued by the 2nd petitioner
Exhibit R(1)	True copy of the relevant page of PPO No.756021600290
Exhibit R(2)	True copy of the Order in OA No.739/2016 of CAT Ernakulam Bench