

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

TUESDAY, THE 25TH DAY OF NOVEMBER 2014/4TH AGRAHAYANA, 1936

OP (CAT).No.734 of 2012 (Z)

AGAINST THE ORDER/JUDGMENT IN OA 215/2011 OF
CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH
DATED 14/2/2012

PETITIONER :

SURESH.P,
AGED 52 YEARS, S/O. M.BALAKRISHNAN NAIR (LATE),
LOWER DIVISION CLERK,
INSPECTORATE DOCK SAFETY (IDS) GOVERNMENT OF INDIA,
MINISTRY OF LABOUR AND EMPLOYMENT G.V.IYER ROAD,
WELLINGTON ISLAND,
KOCHI 682003, NOW RESIDING AT GANESH VIHAR,
VADAKKENCHERRY.P.O.,
PALAKKAD-678683, KERALA .

BY ADV. SRI.B.HARISH KUMAR

RESPONDENTS :

1. UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
MINISTRY OF LABOUR AND EMPLOYMENT,
SHRAM SHAKTHI BHAVAN, RAFFI MARG, NEW DELHI – I.
2. DIRECTOR GENERAL,
DIRECTORATE GENERAL FACTORY ADVICE SERVICE AND LABOUR
INSTITUTES (DGFASLI),
SION, CLI BUILDING, BOMBAY –22.
3. THE ASSISTANT DIRECTOR (SAFETY),
INSPECTORATE DOCK SAFETY (IDS) GOVERNMENT OF INDIA,
MINISTRY OF LABOUR AND EMPLOYMENT G.V. IYER ROAD,
WELLINGTON ISLAND, KOCHI 682003.

R1 TO 3 BY ADV. SMT.GOVINDA P.RENUKADEVI, CGC
R1 BY ADV. SRI.N.NAGARESH, ASG OF INDIA (NO MEMO)
BY SRI.P.PARAMESWARAN NAIR, ASG OF INDIA

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 25-11-2014,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :-

- EXHIBIT P1. TRUE COPY OF THE ABOVE ORIGINAL APPLICATION FILED BY THE PETITIONER.
- EXHIBIT P2. TRUE COPY OF THE REPLY STATEMENT FILED BY THE RESPONDENTS.
- EXHIBIT P3. TRUE COPY OF THE REJOINDER DATED 10//7/2011 FILED BY THE PETITIONER.
- EXHIBIT P4. TRUE COPY OF THE ADDITIONAL REPLY STATEMENT DATED NIL FILED BY THE RESPONDENTS.
- EXHIBIT P5. TRUE COPY OF THE ADDITIONAL REJOINDER DATED 4/12/2011 FILED BY THE PETITIONER,
- EXHIBIT P6. TRUE COPY OF THE ABOVE ORDER DATED 14/2/2012 IN OA NO.215/2011 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.
- EXHIBIT P7. TRUE COPY OF THE OFFICE ORDER DATED 23/1/2008 ISSUED BY THE RESPONDENTS.

RESPONDENTS' EXHIBITS :-

- Ext.R1: PHOTOCOPY OF THE SCHEME.
- Ext.R2: PHOTOCOPY OF THE ORDER/OFFICE MEMORANDUM DTD.9/8/99.
- Ext.R3: PHOTOCOPY OF THE LETTERS FROM PETITIONER.

ANTONY DOMINIC & ANIL K.NARENDRA, JJ.

O.P.(CAT)No.734 of 2012

Dated this the 25th day of November, 2014

JUDGMENT

ANTONY DOMINIC, J.

This Original Petition is filed challenging the order passed by the Central Administrative Tribunal in O.A.No.215 of 2011 filed by the petitioner herein. The claim of the petitioner was for the 2nd Higher Grade as provided under the Assured Career Progression Scheme, a copy of which is marked as Annexure-A1. Referring to a clarification issued by the Government of India, the Tribunal declined the prayer. It is this order, which is under challenge before us.

2. We heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondents.

3. Facts of the case are that, on 23/3/1983, the petitioner was appointed as a Lower Division Clerk at the office of the Dock Safety Authority at Mumbai. He was transferred to New Mangalore on 2nd July, 1983 and in August,

2006 and was again transferred to the office of the 3rd respondent at Kochi.

4. By Annexure-A1 dated 9/8/1999 the Government of India introduced a stagnation removal, named, Assured Career Progression Scheme ('ACP' for short) which provided for 1st Higher Grade on completion of 12 years and the 2nd Higher Grade on completion of 24 years of services. The claim of the petitioner is that he having entered service in 1983, was entitled to get the benefit on completion of 12 years and 24 years thereof. According to him, the benefit of 1st Higher Grade was given only by Annexure.A2 with effect from 09/08/1999 when the scheme was introduced. He says that, on 22/3/2007, he having completed 24 years of service, ought to have been given the 2nd Higher Grade under the ACP Scheme.

5. It is seen from the records produced before this Court that the ACP scheme was introduced with several conditions including that an employee should be willing to accept the promotions that are offered to him. It is also

provided that a person who declines promotion will stand debarred for a period of one year for consideration under the Scheme. It is seen that, by Annexure-A5 a DPC list was published on 09/07/2003 for promotion to the post of UDC. In that list the petitioner was No:2. The petitioner himself admits that he declined promotion on that occasion. Again on 01/02/2007 Annexure-A6 list was published for filling of one vacancy of UDC at Mumbai. In that list the petitioner was No:3 and Ext.R3 produced along with the additional reply statement filed by the respondents show that, by communication dated 2/3/2007, the petitioner had informed that he was unable to accept promotion to the post of UDC. The subject of this letter has been shown as "promotion to the post of UDC in CLI, Mumbai-Unwillingness-Regarding." According to him, it was the 9th person in the list who was promoted in the list mentioned in Annexure-A6. These two refusals on the part of the petitioner show that he had suffered a debarment for two years and as a result he completed 24

years prescribed for the 2nd Higher Grade only on 23/3/2009.

6. In the meantime, with effect from 01/09/2008 the ACP scheme mentioned above was superseded and by Annexure.A7 dated 19/5/2009 modified Assured Career Progression Scheme was introduced. It was in such circumstances that his claim for ACP scheme with effect from 23/3/2007 came to be rejected by the Departmental Authorities.

7. The order passed by the Tribunal shows that referring to Annexure.A13 clarification issued by the Government of India clarifying ACP scheme, the Tribunal held that on account of his refusal to accept promotion, he was not eligible for the 2nd Higher Grade. The order also shows that the Tribunal has proceeded on the basis that there was only one refusal by the petitioner in 2003. Exhibit-R3, which we have referred to, has been omitted to be noted by the Tribunal. Its conclusion that there was only one refusal by the petitioner in 2003 is also factually incorrect. We also do not see the

extracted portion in paragraph '7' of the order anywhere in Annexure.A13.

8. However, even on the petitioner's own showing since his completion of 24 years for the 2nd Higher Grade was only in 2009, he could not have claimed the 2nd Higher Grade in 2007. In such circumstances, though for reasons which are different from what are assigned by the Tribunal we uphold the conclusion of the Tribunal declining the claim prayed for.

We do not find any merit in the Original Petition. Therefore, the Original Petition is dismissed.

ANTONY DOMINIC, JUDGE

ANIL K.NARENDHAN, JUDGE

skj