



2024/KER/37189

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

TUESDAY, THE 28TH DAY OF MAY 2024 / 7TH JYAISHTA, 1946

OP (CAT) NO. 185 OF 2017

ORDER DATED 08.08.2016 IN OA NO.1106 OF 2013 OF CENTRAL

ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

PETITIONERS/RESPONDENTS:

- 1 UNION OF INDIA, REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY OF AGRICULTURE AND FARMERS WELFARE, DEPARTMENT OF ANIMAL HUSBANDRY, DAIRYING AND FISHERIES, KRISHI BHAVAN, NEW DELHI 110 001.
- 2 THE DIRECTOR, CENTRAL INSTITUTE OF FISHERIES, NAUTICAL AND ENGINEERING TRAINING [CIFNET], MINISTRY OF AGRICULTURE AND FARMERS WELFARE, DEPARTMENT OF ANIMAL HUSBANDRY, DAIRYING AND FISHERIES, FORESHORE ROAD, KOCHI 682 016.

BY ADV SRI.T.V.VINU, CGC

RESPONDENT/APPLICANT:

P.J. ANTONY, RETIRED AS MATE FROM CENTRAL INSTITUTE OF FISHERIES, NAUTICAL AND ENGINEERING TRAINING, [CIFNET], MINISTRY OF AGRICULTURE AND FARMERS WELFARE, DEPARTMENT OF ANIMAL HUSBANDRY, DAIRYING AND FISHERIES, FORESHORE ROAD, KOCHI 682 016., AND RESIDING AT PULICKAL HOUSE, KANNAMALY P.O, PUTHENTHODE, KOCHI 682 008.

BY ADVS.
SMT.S.LAKSHMY
SRI.SHAFIK M.A.

THIS OP (CAT) HAVING COME UP FOR HEARING ON 06.03.2024, ALONG WITH OP (CAT).157/2018, THE COURT ON 28.05.2024 DELIVERED THE FOLLOWING:



2024/KER/37189

OP(CAT) Nos.185/2017 & 157/2018

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

TUESDAY, THE 28TH DAY OF MAY 2024 / 7TH JYAISHTA, 1946

OP (CAT) NO. 157 OF 2018

ORDER DATED 08.08.2016 IN OA NO.1106 OF 2013 OF CENTRAL

ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

PETITIONER/APPLICANT:

P.J. ANTONY, AGED 67 YEARS
MATE (RETD), CENTRAL INSTITUTE OF FISHERIES NATURAL
AND ENGINEERING TRAINING, RESIDING AT PULICKAL
HOUSE, KANNAMALY.P.O., COCHIN, PIN - 682008

BY ADV SHAFIK M.A.

RESPONDENTS/RESPONDENTS:

- 1 UNION OF INDIA, REPRESENTED BY ITS SECRETARY,
MINISTRY OF AGRICULTURE, ANIMAL HUSBANDRY, DAIRYING
AND FISHERIES, NEW DELHI, PIN - 110001
- 2 THE DIRECTOR,
CENTRAL INSTITUTE OF FISHERIES, NAUTICAL AND
ENGINEERING TRAINING, FINE ARTS AVENUE, COCHIN-
682016

BY ADVS.
MANU S., DSG OF INDIA
SHRI.T.V.VINU, CGC

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 06.03.2024,
ALONG WITH OP (CAT).185/2017, THE COURT ON 28.05.2024
DELIVERED THE FOLLOWING:



'CR'

JUDGMENT**SHOBA ANNAMMA EAPEN, J.**

The applicant and the respondents before the Central Administrative Tribunal, Ernakulam Bench, have come up before this Court by filing separate original petitions, challenging the order dated 08.08.2016 in OA No.1106 of 2013 of the tribunal.

2. OP(CAT) No.185 of 2017 is filed by the Union of India and the Central Institute of Fisheries, Nautical and Engineering Training (CIFNET), who were the respondents before the tribunal; and OP(CAT) No.157 of 2018 is filed by the applicant. For brevity, the parties are referred to as they are arrayed in the original application.

3. The original application was filed by the applicant with the following prayers;

“(i) To declare that the applicant is entitled for 2nd and 3rd financial upgradations under MACP Scheme w.e.f. 1.9.2008.

(ii) To direct the respondents to grant 2nd and 3rd financial upgradations under MACP Scheme w.e.f. 1.9.2008.



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(iii) To direct the respondents to grant the financial benefits arising from the 2nd and 3rd financial upgradations including arrears of pay and allowances, retirement benefits, leave encashment and all other consequential monetary benefits within a stipulated time.”

4. The applicant is a pensioner retired on superannuation on 30.09.2009 as “Mate Grade II” from the office of the second respondent. He joined service as “Bosun” on 20.10.1973 and was promoted as “Mate Grade II” with effect from 21.05.1980. He got only one promotion within the span of 24 years and thus, he was entitled for second financial upgradation under the ACP Scheme, which was introduced on 09.08.1999 with a grade pay of Rs.6,600/-. He was granted second financial upgradation under the ACP scheme only in April, 2002. The applicant continued as “Mate” till his superannuation on 30.09.2009. While so, the MACP Scheme was introduced on 19.05.2009. On implementation of the 6th Central Pay Commission (CPC), the pay scales of “Bosun” and “Mate” were merged with the grade pay of Rs.4,200/-. On merger of the two posts, the applicant did not get any promotion and as such, he is entitled for three financial upgradations during his entire career. Since the applicant was



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granted one financial upgradation under the ACP Scheme, he is entitled for further two upgradations under the MACP Scheme with effect from 01.09.2008. He was drawing the pay applicable to the post of "Skipper" on getting the second financial upgradation under the ACP Scheme. Though representations were submitted, the applicant was not granted the second financial upgradation under the MACP Scheme and he was asked to submit an application for retaining the overall grading as "good" in the ACR for the year 2005-06. As seen from Annex.A14, wherever promotions are given on non-selection basis, the prescribed benchmark, as mentioned in paragraph 17 of Annex.1 of MACP Scheme dated 19.05.2009, shall not apply for the purpose of grant of financial upgradation under the MACP Scheme. Seniority-cum-fitness is the only basis, on which MACP is granted. Since the applicant is graded as "good", he is entitled for two financial upgradations under MACP Scheme. The applicant has completed 30 years of service on 20.10.2003. He sought for the relief that he should be given second and third financial upgradations under the MACP Scheme with effect from 01.09.2008 including arrears of pay and allowances,



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retirement benefits, leave encashment and all other consequential monetary benefits within a stipulated time. The respondents contended that the applicant was granted the second financial upgradation under the ACP Scheme with effect from 01.04.2002 and he was promoted to the post of "Mate" with effect from 21.05.1980 and while working as Mate, he retired on superannuation on 30.09.2009. As per Annex.A3 OM dated 19.05.2009, the government has introduced the MACP Scheme, which granted three financial upgradations counted from the direct entry grade on completion of 10, 20 and 30 years of service. One of the requirements for consideration of financial upgradation under the MACP Scheme is that the official should fulfill the benchmark criteria prescribed therein. The applicant completed 34 years of service as on 01.09.2008 and has earned one promotion and one financial upgradation under the earlier ACP Scheme. Based on the above said provisions, the promotion granted to him from the post of "Bosun (Certified)" to "Mate" is to be ignored; and hence, he should have been considered for second and third financial upgradations under the MACP Scheme. Paragraph 17 of



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Annex.A3 OM dated 19.05.2009 stipulates that the required minimum benchmark for financial upgradation to the grade pay of Rs.7,600/- and above is “very good”. The ACR gradings of the applicant for the years, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09 are “good”, “good”, “not available”, “good”, “very good” and “very good” respectively. The committee considered the case of the applicant and found that the applicant is not eligible for financial upgradation under the MACP Scheme since he does not fulfill the required benchmark. The OM dated 13.04.2010 stipulates that only below benchmark ACR for the period relevant to promotion need be sent and there is no need to send below benchmark ACRs of other years. Since the ACR in respect of the applicant for the 2005-06 was not available, the same has been written afresh and the applicant has been graded as “good”. Since the ACR grading of the applicant for the years, 2003-04, 2004-05, 2005-06 and 2006-07 are “good”, which is below the benchmark, the same has to be communicated to the applicant and reviewed. Vide Annex.A7 and A9 communications dated 14.11.2012 and 25.06.2013, copies of the ACR have been furnished by the applicant. Thereafter,



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representations were filed by the applicant, which were considered by the committee and the ACR gradings for the said period were retained. The applicant did not file any appeal on the retention of the gradings. Under the MACP Scheme, the applicant has to be considered to the pay bands of Rs.7,600/- and Rs.8,700/-, which is merely the next immediate higher grade pay in the hierarchy of the recommended revised pay bands and these grade pays are not that of a promotional post on non-selection basis of the applicant nor that of a post which requires a benchmark lower than that prescribed in the MACP Scheme. Since the applicant did not fulfill the benchmark requirements under paragraph 17 of the MACP Scheme, the applicant was not granted the pay bands of Rs.7,600/- and Rs.8,700/-. The tribunal, on a detailed consideration of the issue, found that the applicant is entitled for the relief as prayed for, however, the arrears are restricted to a period of three years immediately prior to the filing of the original application. It is challenging this, the applicant and the respondents are before us by filing separate original petitions.

5. The learned counsel for the applicant submitted



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that the applicant got only one promotion within the span of 24 years and he is entitled for second financial upgradation under the ACP Scheme with effect from 09.08.1999, which was granted in April, 2002. Thereafter, the pay band and grade pay of “Bosun” as well as “Mate Grade II” were merged. The applicant is entitled for three financial upgradations during his entire career and while the MACP Scheme was introduced on 19.05.2009, the applicant was entitled for second and third financial upgradations. The learned counsel for the applicant relied on Annex.A14 OM dated 04.10.2012 and submitted that wherever promotions are given on non-selection basis, the prescribed benchmark as mentioned in paragraph 17 of Annex.I of MACP Scheme dated 19.05.2009 shall not apply for the purpose of grant of financial upgradation under the MACP Scheme. The learned counsel further submitted that the tribunal erroneously restricted the arrears to a period of three years immediately prior to the filing of the original application on a wrong consideration of the apex court decision in **Union of India & Others v. Tarsem Singh** [(2008) 8 SCC 648]. It was further submitted that as per the provisions of the MACP Scheme, the promotion earned



and upgradation granted under the ACP Scheme in the past to those grade, which now carry the same grade pay due to merger of pay scales and upgradation of posts, shall be ignored for the purpose of granting upgradations under the MACP Scheme. Therefore, on the merger of the post of “Bosun (Certified)” to “Mate”, the promotion granted to the applicant from the post of “Bosun (Certified)” to “Mate” is to be ignored and as such, he is entitled to the second and third financial upgradations under the MACP Scheme, the first financial upgradation being under the ACP Scheme.

6. *Per contra*, the learned Central Government Counsel submitted that the applicant had earned second ACP in the pay scale of Rs.10000-325-15200, i.e., the pay attached to the next promotional post of “Skipper” with grade pay of Rs.6,600/-. It is further submitted that the next financial upgradation is the second and third MACP to the next higher grade pay of Rs.7,600/- and Rs.8,700/- respectively and not to the grade pay of the next promotional post. The learned Central Government Counsel, pointing out to paragraph 17 of the MACP Scheme, submitted that the applicant does not possess the required benchmark, wherein it is stipulated as



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follows;

“17. The financial upgradation would be on non-functional basis subject to fitness, in the hierarchy of grade pay within the PB-1. Thereafter for upgradation under the MACPs the benchmark of ‘good’ would be applicable till the grade pay of Rs.6600/- in PB-3. The benchmark will be ‘Very Good’ for financial upgradation to the grade pay of Rs.7600 and above.”

It is further argued that the tribunal erred in relying on Annex.A14 OM dated 04.10.2012, which is not applicable to the facts of the case on hand. The applicant got the second financial upgradation to the next promotional post of “Skipper” with grade pay of Rs.6,600/-. There was no further promotional post for “Skipper”. The financial upgradation under MACP Scheme does not happen to be in the promotional post. Hence, the applicant, who was already drawing the grade pay of “Skipper”, i.e., Rs.6,600/- by virtue of the second ACP, the question whether the “Skipper” is a selection post or not is irrelevant. It was further submitted that since there was no promotional post after the post of “Skipper”, the benchmark of “very good” as per paragraph 17 of the MACP Scheme is necessary. Annex.A14 OM dated 04.10.2012 does not apply at all to the case of the applicant since there is no promotion to the post of “Skipper”. Hence,



what is applicable is paragraph 17 of the MACP Scheme, which states that the benchmark should be “very good”. Since the applicant did not achieve the said criteria, he is not eligible for the second and third financial upgradations under the MACP Scheme.

7. We have considered the rival contentions put forward by both parties. The question to be considered in this case is whether the applicant is entitled for second and third financial upgradations under the MACP Scheme. It is an admitted fact that the applicant, who joined service as “Bosun” was promoted as “Mate Grade II” with effect from 21.05.1980. He also got a second financial upgradation under the ACP Scheme in April, 2002. Thereafter, the MACP Scheme granting three financial upgradations for 10, 20 and 30 years of service was introduced on 19.05.2009. While so, the posts of “Bosun” and “Mate Grade II” were merged. In effect, the applicant did not get any promotion and hence, he is entitled for three financial upgradations during his entire career.

8. Admittedly, the remarks in the ACRS of the applicant for the years, 2003-04, 2004-05, and 2007-08 are “good”. As per the MACP Scheme, for financial upgradations,



the benchmark should be “very good”. In this context, it is relevant to refer to Clause 2(ii) of Annex.A14 OM dated 04.10.2012, which reads thus;

“2.(ii) Benchmark for MACP Scheme:

Para 17 of Annexure-I of the MACP Scheme provide that the financial upgradation would be on non-functional basis subject to fitness, in the hierarchy of grade pay within the PB-1. Thereafter for upgradation under the MACPS, the benchmark of 'good' would be applicable till the grade pay of Rs.6600/- in PB-3. The benchmark will be 'Very Good' for financial upgradation to the grade pay of Rs.7600 and above. This Department's OM No. 35034/3/2008-Estt. (D) (Vol.11) dated 01.11.2010 provides that where the financial upgradation under MACPS also happens to be in the promotional grade and benchmark for promotion is lower than the benchmark for granting the benefit under MACPS as mentioned in para 17 ibid, the benchmark for promotion shall apply to MACP also. It is now further clarified that wherever promotions are given on non-selection basis (i.e. on seniority cum fitness basis), the prescribed benchmark as mentioned in para 17 of Annexure-I of MACP Scheme dated 19.05.2009 shall not apply for the purpose or grant of financial upgradation under MACP Scheme.”

In Clause 2(ii), it is clarified that wherever promotions are given on non-selection basis, the prescribed benchmark as mentioned in para 17 of Annexure-I of MACP Scheme dated 19.05.2009 shall not apply for the purpose or grant of financial upgradation under MACP Scheme. Hence, it is clear that it applies only in cases of promotions. Admittedly, the last



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promotion post of the applicant was “Skipper” and he was receiving financial upgradations to the post of “Skipper”. Under the MACP Scheme, the applicant has to be considered to the next immediate higher grade pay in the hierarchy of the recommended revised pay bands and these grade pays are not that of a promotional post on non-selection basis of the applicant nor that of a post, which requires a benchmark lower than that prescribed in the MACP Scheme. It appears that the tribunal has misinterpreted Annex.A14 OM and has found that the benchmark “good” is only required in the case of the applicant. We find that the interpretation of Annex.A14 OM by the tribunal was on the wrong side, which requires a reconsideration. The question whether the post of “Skipper” is a selection post or not is irrelevant since the applicant is already drawing the grade pay of Rs.6,600/- by virtue of the second ACP.

On a consideration of the entire facts of the case, we are of the opinion that the matter has to be remitted back to the tribunal for a reconsideration of the entire issue. Therefore, the original petitions are disposed of, as follows;

- a) The impugned order passed by the tribunal is set aside



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and the matter is remitted back for reconsideration of the entire issue.

- b) The tribunal shall consider the matter afresh including interpretation of Annex.A14 OM dated 04.10.2012 and pass fresh orders as expeditiously as possible.

SD/-

A. MUHAMED MUSTAQUE

JUDGE

SD/-

SHOBA ANNAMMA EAPEN

JUDGE

bka/-



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APPENDIX OF OP (CAT) 157/2018

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE ORIGINAL APPLICATION NO.180/1106/2013 FILE BEFORE THE C.A.T.
- Annexure A1 TRUE COPY OF THE OFFICE ORDER NO.117/73 DATED 07.11.1973 ISSUED BY THE DIRECTOR INTEGRATED FISHERIES PROJECT, KOCHI.
- Annexure A2 TRUE COPY OF THE OFFICE ORDER NO.88/80 DATED 19.06.1980 ISSUED BY THE DIRECTOR INTEGRATED FISHERIES PROJECT, KOCHI.
- Annexure A3 TRUE COPY OF THE OM NO.35043/3/2003 ESTT. DATED 19.05.2009 ISSUED BY THE DOPT.
- Annexure A4 TRUE COPY OF THE REMINDER DATED 28.03.2011.
- Annexure A5 TRUE COPY OF THE LETTER NO.F.NO.22-4/2007/ADMN.VOL.I/391 DATED 21.06.2012 ISSUED BY THE 2ND RESPONDENT.
- Annexure A6 TRUE COPY OF THE LETTER DATED 29.06.2012 ADDRESSED TO THE 2ND RESPONDENT.
- Annexure A7 TRUE COPY OF THE LETTER F.NO.22-4/2007/ADMN.VOL.I/542 DATED 14.11.2012 ISSUED BY THE 2ND RESPONDENT.
- Annexure A8 TRUE COPY OF THE REPLY DATED 27.01.2012 SUBMITTED BY THE APPLICANT.



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- Annexure A9** TRUE COPY OF THE LETTER F.NO.22-4/2007
ADMN.VOL.I DATED 25.06.2013 ISSUED BY
THE 2ND RESPONDENT.
- Annexure A10** TRUE COPY OF THE REPLY DATED
27.06.2013.
- Annexure A11** TRUE COPY OF THE LETTER F.NO.22-4/2007
ADMN.VOL I DATED 19.09.2013 ISSUED BY
THE 2ND RESPONDENT ALONG WITH THE COPY
OF THE ACR 2005-2006.
- Annexure A12** TRUE COPY OF THE REPRESENTATION DATED
10.10.2013.
- Annexure A13** TRUE COPY OF THE ORDER DATED
08.01.2008 IN O.A 610/2006.
- Annexure A14** TRUE COPY OF THE OM DATED 04.10.2012
ISSUED BY THE DOPT.
- Exhibit P2** TRUE COPY OF THE REPLY STATEMENT FILED
BY THE RESPONDENTS IN THE O.A
NO.180/1106/2013.
- Annexure R1** TRUE COPY OF THE GOVERNMENT OF INDIA,
DEPARTMENT OF PERSONNEL & TRAINING OM
NO.21011/2010-ESTT.A DATED 13.04.2010.
- Annexure R2** TRUE COPY OF THE COMMUNICATION NO.22-
4/2013-ADMN/APAR DATED 04.11.2013
ISSUED TO THE APPLICANT.
- Exhibit P3** TRUE COPY OF THE REJOINDER FILED BY
THE APPLICANT IN O.A.NO.180/1106/2013.
- Annexure A15** TRUE COPY OF THE RECRUITMENT RULES FOR
THE POST OF SKIPPER DATED 15.05.2008.
- Annexure A16** TRUE COPY OF THE ORDER DATED
07.07.2014 IN O.A.NO.305/2013.



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Exhibit P4 **TRUE COPY OF THE ORDER DATED**
08.08.2016 OF THE C.A.T IN
O.A.NO.180/1106/2013.

Exhibit P5 **TRUE COPY OF THE ORDER NO.F.1-**
16/2010E.II DATED 05.10.2015 ISSUED BY
THE DIRECTOR FSI.



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APPENDIX OF OP (CAT) 185/2017

PETITIONER ANNEXURES

ANNEXURE-A1 TRUE COPY OF THE OFFICE ORDER NO.17/73 DATED 07.11.1973 ISSUED BY THE DIRECTOR, INTEGRATED FISHERIES PROJECT, COCHI

ANNEXURE-A2 TRUE COPY OF THE OFFICE ORDER NO.88/80 DATED 19.06.1980 ISSUED BY THE DIRECTOR, INTEGRATED FISHERIES PROJECT, COCHI

ANNEXURE-A3 TRUE COPY OF THE OM NO,35034.3.2008-ESTT DATED 19.05.2009 ISSUED BY THE DOPT

ANNEXURE-A4 TRUE COPY OF THE REMINDER DATED 28.03.2011

ANNEXURE-A5 TRUE COPY OF THE LETTER F.,NO.22-4/2007/ADM.VOL I/391 DATED 21.06.2012 ISSUED BY THE 2ND RESPONDENT

ANNEXURE-A6 TRUE COPY OF THE LETTER DATED 29.06.2012 ADDRESSED TO THE 2ND RESPONDENT

ANNEXURE-A7 TRUE COPY OF LETTER F.NO.22-4/2007 ADMN VOLL/542 DATED 14.11.2012

ANNEXURE-A8 TRUE COPY OF THE REPLY DATED 27.11.2012 SUBMITTED BY THE APPLICANT

ANNEXURE-A9 TRUE COPY OF THE LETTER F.NO.22-4/2007 ADMN VOL I DATED 25.06.2013 ISSUED BY THE 2ND RESPONDENT

ANNEXURE-A10 TRUE COPY OF THE REPLY DATED 27.06.2013



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ANNEXURE-A11 TRUE COPY OF THE LETTER F.NO.22-4/2007 ADMN.VOL I DATED 19.06.2013 ISSUED BY THE 2ND RESPONDENT ALONG WITH THE COPY OF THE ACR 2005-2206

ANNEXURE-A12 TRUE COPY OF THE REPRESENTATION DATED 10.10.2013

ANNEXURE-A13 TRUE COPY OF THE ORDER DATED 08.01.2008 IN OA 610/2006

ANNEXURE-A14 TRUE COPY OF THE OM DATED 04.10.2012 ISSUED BY THE DOPT

ANNEXURE-R1 TRUE COPY OF THE GOVERNMENT OF INDIA,DEPARTMENT OF PERSONNEL AND TRAINING OM NO 21011/1/201 ESTT.A DATED 13.04.2010

ANNEXURE-R2 TRUE COPY OF THE COMMUNICATION NO.22-4/2013-ADMN/APAR DATED 04.11.2013 ISSUED TO THE APPLICANT

ANNEXURE-A15 TUE COPY OF THE RECRUITMENT RULES FOR THE POST OF SKIPPER DATED 15.05.2008

ANNEXURE-A16 TRUE COPY OF THE ORDER DATED 07.07.2014 IN OA NO.305/2013

EXHIBIT P1. COPY OF THE OA 1106/2013 DATED 12.8.14 FILED BY THE RESPONDENTS BEFORE THE CAT, ERNAKULAM BENCH.

EXHIBIT P2. COPY OF THE REPLY STATEMENT DATED 12.10.15, FILED BY THE PETITIONERS.

EXHIBIT P3. COPY OF THE REJOINDER DATED 21.10.15, FILED BY THE RESPONDENT.



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EXHIBIT P4.

**COPY OF THE ORDER IN OA 1106 OF 2013
DATED 8.8.16 OF THE CENTRAL
ADMINISTRATIVE TRIBUNAL ERNAKULAM
BENCH.**