

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH**

OA/310/01872/2016

Dated Thursday ,the 27th day of February, 2020

PRESENT

The Hon'ble Mr. T. Jacob, Member(A)

1. M.Dhansingh
 2. A.Hussain Sheriff
 3. J.Richard
 4. M.Sampath
 5. L.Biswas
 6. V.Murugan
 7. C.Antony Samy,
 8. R.Panjanathan
 9. K.Gunasekaran
 10. S.Selvam
 - 11.T.Yeliah.
- (By Advocate M/s K.M. Ramesh)

...Applicants

Vs

1. Union of India Rep by
The General Manager,
Canteen Stores Department,
Ministry of Defence,
“Adelphi”, 119, M.K.Road,
Mumbai- 400 020.
 2. The Joint General Manager,
Canteen Stores Department,
Ministry of Defence,
“Adelphi”, 119, M.K.Road,
Mumbai- 400 020.
 3. The Area Manager,
Canteen Stores Department,
Chennai Area Depot,
Ministry of Defence,
Fort St. George, Chennai- 600 009.
- (By Advocate Mr.J.Vasu)

...Respondents

ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Member(A))

The applicants have filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"to issue a direction directing the respondents to consider the claim of the applicants for regularisation of their service in the cadre of Mazdoor/Watchman from the date of their entry into service as Casual labour with all attendant and monetary benefits and to dispose of their representations forwarded by the 3rd respondent to the 1st respondent along with covering letter dated 21.12.2015 (Ann. A-21) within a time frame and to pass such other further order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and thus render justice."

2. The brief facts of the case as submitted by the applicants are as follows:-

The applicants joined the service of Canteen Stores Department as Casual Mazdoor/Watchman on various dates and they have been working continuously without any break from that date onwards. However, the services of the applicants were confirmed on different dates nearly after 3 to 8 years. The applicants came to know that based on the direction issued by this Tribunal and confirmed by the Hon'ble High Court, the Department implemented the order giving them regularisation from the date of their initial entry into service. The applicants submitted representations and reminder letters requesting the 1st respondent to issue necessary orders regularizing their services from the date of initial entry into service. The said representations have not been disposed of till date. Hence, they have filed this OA seeking the above relief, inter-alia, on the following grounds:-

i. In as much as the case of the applicants and the case of other employees in other States whose cases have been considered and orders passed regularizing their services from the date of their initial entry into service are one and the same and when they have all been granted retrospective regularization with effect from the date of initial entry into service the applicants are also entitled to the same treatment and denial of such a treatment amounts to violation of Articles 14 and 16 of the Constitution of India.

ii. The action of the Respondents in refusing to grant regularization to the applicants from the date of their initial entry into service and not disposing of their representations is arbitrary, discriminatory and contrary to various decisions.

3. Per contra, the respondents in their reply have raised preliminary objection to the fact that the CAT, Mumbai Bench while disposing of the OAs filed by the employees of CSD has overlooked the decision of the Hon'ble Supreme Court dated 31.03.2010 in SLP No.5121/2005 in the case of *Union of India and others vs. Sasikumar and others*, that the impugned judgement shall not operate as a precedent in future. The admission of the OA and decision given in favour of the applicants while disposing of the OA No.193/2011 in the case of Karan Purao and others vs. Union of India has paved a way and opened pandoras box resulting in too many similarly placed employees approaching various Tribunals and resulting in passing an order in favour of the applicants ignoring the ruling of the Hon'ble Supreme Court. Further the daily rated employees at the time of joining CSD after regularisation of their services w.e.f. 11.05.1991 or thereafter had given undertaking in writing that they will not at any time claim the past daily rated service for any benefit thereof

which was a pre-condition mentioned in the appointment letter. All the applicants after getting regularisation of their services have approached the Tribunal for counting of their past daily rated services with vested interest for seniority and undue monetary gains for which they do not deserve. The CAT Mumbai Bench and various other CAT have erred in not taking cognizance of this important and vital fact thereby allowing the applicants to violate their own oath undertaken by them as a Government servant. Hence, the respondents pray that this OA is liable to be dismissed on this ground alone.

4. On merits, the respondents have stated that the applicants were engaged on casual basis due to shortage of staff and not on regular basis. However, the details of engagements on casual/daily rated basis prior to their regularisation of their services are not traceable as of now. The applicants prior to their joining, their services have been accepted with the condition in the appointment letter that they will not claim for counting of their past service rendered in the Department as Daily Rated/Casual Worker for the purpose of fixation of pay, seniority, promotion, pension etc. It has been clarified by DoP&T in its OM dated 10.02.2000 that adhoc/quasi services rendered by the applicants cannot be counted for the purpose of granting ACP/MACP. Hence, the respondents pray for dismissal of the OA.

5. The respondents have relied on the following decisions in support of their submissions:-

- i. The Order of the Hon'ble High Court of Madras in W.P.No. 7986 & 7987 of 2010 P. Deivendran Vs The Chairman.

ii. The Order of the Hon'ble High Court of Madras in W.P.No. 38430/2015 Murugaiyan Vs Union of India, Rep by its Chief Secretary, Government of Puducherry, Secretariat, Puducherry.

iii. The Order of the Hon'ble High Court of Madras in W.P.No. 13237 of 2018, A.Ruben Vs Government of Tamil Nadu.

6. Heard the learned counsel for the respective parties and perused the pleadings and documents on record including the judgement of the Hon'ble High Court of Bombay in W.P.No.1202/2012.

7. The learned counsel for the applicant invited the attention of this court to OA.193/2011 wherein the Mumbai Bench of the Central Administrative Tribunal has allowed the similar relief to the applicants therein and the same has also been upheld by the Hon'ble Hon'ble High Court of Mumbai in W.P.(L) No.1202 of 2012 and batch dated 24.07.2013 with the following directions:-

21. The Hon'ble Supreme Court in the case of State of Maharashtra & Ors. vs. Uttam Vishnu Pawar (2008) 2 SCC 646, taking note of its previous decision in the case of Dwijen Chandra Sarkar (supra) Union of India vs. V.N.Bhat (2003) 8 SCC 714, A.P.SEB vs. R. Parthasarathi [(1998) 9 SCC 425], Scientific Advisor to Raksha Mantri v. V.M.Joseph (1998) 5 SCC 305 and Renu Mullick vs. Union of India (1994) 1 SCC 373 held that it has been the consistent approach of the Supreme Court and it is no more res integra that an incumbent on transfer to a new department may not get seniority but his experience of the past service rendered will be counted for the purposes of other benefits like higher pay scale as per TBPS of the Government. In this judgment, the Supreme Court has taken the view that merely because such past service is not liable to be counted for the purpose of seniority is no ground for taking into account such service for award of benefits under TBPS. In case of Dwijen Chandra Sarkar (supra), the Supreme Court explained that the true purpose of such schemes is to relieve frustration on account of stagnation and the scheme does not involve the actual grant of

promotional post to the employees but merely monetary benefits in form of next higher grade subject to fulfillment of qualifications and eligibility criteria.

22. In the light of the aforesaid judgments of the Supreme Court, we are of the opinion that the view taken by the CAT, Mumbai Bench does not call for any interference, particularly since limited relief of counting the service from initial date of engagement for the purpose of financial upgradation under ACPS has been granted to the respondent employees by taking into consideration the peculiar facts and circumstances of the case.

8. The Hon'ble Supreme Court in Civil Appeal No. 9849 of 2014 (Arising out of SLP (C) No. 18639 of 2012) *State of Uttar Pradesh & Ors Vs Arvind Kumar Srivastava & Ors* has held as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.”

9. The Hon'ble Supreme Court in the Judgement in 2011 (4) SCC 374 BSNL Vs. Ghanshyam Dass & Others has held that in the case of an order which is applicable to all similarly placed persons there was no necessity for each and every one of them to move to the Court as the order would cover all such persons.

10. In *Inder Pal Yadav v. Union of India*, (1985) 2 SCC 648, the Apex Court has held as under:-

"... those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court.

11. The Apex Court as early as in 1975 in the case of *Amrit Lal Berry v. CCE*, (1975) 4 SCC 714, held as under:-

We may, however, observe that when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court.

12. The V Central Pay Commission in its recommendation, in regard to extension of benefit of court judgment to similarly situated, held as under:-

“126.5 – Extending judicial decisions in matters of a general nature to all similarly placed employees. - We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of Central Administrative Tribunal, Bangalore in the case of *C.S. Elias Ahmed and others v. UOI & others* (O.A. Nos. 451 and 541 of 1991), wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like *G.C. Ghosh v. UOI*, [(1992) 19 ATC 94 (SC)], dated 20-7-1998; *K.I. Shepherd v. UOI* [(JT 1987 (3) SC 600)]; *Abid Hussain v. UOI* [(JT 1987 (1) SC 147)], etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing the other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general

nature applicable to a group or category of Government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee.”

13. In view of the fact that the applicants in the instant case are also similarly placed as that of the applicants in OA.193/2011 which has been upheld by the Hon'ble High Court of Mumbai (supra) and implemented by the respondents as well, I direct the respondents to consider the claim of the applicants for regularisation of their services in the cadre of Mazdoor/Watchman from the date of their entry into service as Casual labour with all attendant and monetary benefits and pass a fresh order in accordance with law within a period of three months from the date of receipt of a copy of this order.

14. The OA is disposed of accordingly. No costs.

(T. JACOB)
MEMBER(A)
-02-2020

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