



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.1978/2014

New Delhi, this the 14th January, 2020

**Hon'ble Mrs. Justice Vijay Lakshmi Member(J)
Hon'ble Mr. Pradeep Kumar, Member (A)**

Nagendra Kumar Shrivastava
 Age about 52 years
 S/o Late Sh. Bal Mukund Lal Shrivastava
 R/o H.No.H-1708, Avas Vikas No.1
 Kalyan Pur, Kanpur, UP. ...Applicant

(By Advocate: Shri M.K. Bhardwaj)

Vs.

Union of India and Others through

1. The Secretary, Ministry of Textiles
 Udyog Bhawan, New Delhi-110001.
2. The Development Commissioner (Handicrafts)
 Govt. of India, Ministry of Textile
 West Block No.7, R.K. Puram
 New Delhi-110066. ..Respondents

(By Advocate: Shri D.S. Mahendru)

Order (Oral)

Justice Vijay Lakshmi, M(J)

The applicant had approached the Tribunal earlier by filing OA No.499/2013 which was decided on 08.02.2013, in terms of decision in OA No.409/2013 (D.K. Gupta Vs. UOI). The OA No.409/2013 was, in



turn, decided based on judgment dated 14.01.2011 in OA No.183/2011 (Phool Singh), which was already implemented also by respondents.

2. The plea raised in OA No.183/2011, was that the time spent as ad hoc be also counted for grant of ACP/MACP benefit. The Tribunal decided OA No.183/2011, by giving direction to respondents to pass a reasoned and speaking order. Thereafter, respondents took this ad-hoc period also into account and released the ACP/MACP benefits to Shri Phool Singh. Thus, while OA No.183/2011 was not decided on merit and respondents were directed to take decision, they in turn granted the benefit sought for.

3. In OA No.499/2013 also, the respondents were directed to decide the case of the applicant by passing a reasoned and speaking order. This reasoned order has since been passed by the respondents on 28.05.2013 followed by a detailed order dated 26.08.2013. This order now relies upon the policy directives issued by DOP&T on 13.06.2012 which lay down that "services rendered on ad-hoc/contract basis before regular appointment, will not be counted towards qualifying



services for the purpose of grant of benefits under ACP/MACPs".

4. This speaking order also indicates that the applicant was appointed on ad-hoc basis on 05.12.1984 and date of regular appointment of the applicant was 04.10.1993 and the first ACP was granted to the applicant w.e.f. 04.10.2005. It is also brought out in this speaking order that second MACP becomes due after completion of 20 years of regular qualifying service, i.e., on 04.10.2013, which will be given in due course of time.

5. The applicant has pleaded that his ad-hoc service is required to be counted as was done in respect of Shri Phool Singh (OA No.183/2011 supra), whose case has also been mentioned in the said speaking order. However, it is also mentioned in speaking order dated 26.08.2013 that applicant's case is not similar to the case of Shri Phool Singh because Shri Phool Singh was initially appointed on temporary basis, whereas applicant was ad hoc.

6. The applicant is aggrieved at this rejection and preferred the instant OA, challenging the order dated 28.05.2013 and 26.08.2013 issued by respondents.



7. The respondents relied upon a recent judgment in OA No.200/2014 dated 20.09.2018 (**Adarsh Kumar Saxena vs. UOI and Ors.**). The relevant observations made by the Tribunal, in the said decision, are reproduced below:-

"10. Now we examine the question raised in the present OA, i.e., whether the service rendered by an employee on casual/temporary/daily wage/ad hoc basis prior to the date of his regular appointment can be counted for the purpose of calculation of the required number of years for granting the financial benefits under the ACP/MACP Schemes. The said question is not a res integra and a Division Bench of the Hon'ble Calcutta High Court in WPCT No.396/2014 dated 06.07.2015 titled as Mr. Babu Yohanan Vs. The Union of India and Others (2015 SCC OnLine Cal 2009), after considering various decisions of this Tribunal and also of other decisions of the same High Court including the decision in Sunity Chakraborty Vs. Union of India WPCT 497/2013 dated 11.03.2014 and other decisions of the Hon'ble Apex Court, categorically held that the ad hoc service rendered prior to the regular appointment cannot be taken into consideration for grant of benefit under ACP Scheme. Further, a Coordinate Bench of this Tribunal in OA No.424/2014 order dated 15.11.2017 in Om Pal Singh Malik and Others Vs. Vice Chairman, Delhi Development Authority, New Delhi and Others, also taken a similar view and that **the ACP/MACP Schemes themselves envisaged that the benefits thereunder shall be granted to the employees on consideration of their regular service and that any casual/contractual/temporary/ad-hoc service shall not be reckoned for**



the purpose of counting the required periods under the ACP/MACP Schemes.

11. Granting of ACP/MACP to one Shri Phool Singh by the respondents by counting the service rendered by him on temporary/ad hoc basis prior to his regular appointment as Store Keeper-cum-Clerk, is against the ACP/MACP Schemes itself and also in violation of law, and hence cannot be a ground for granting of identical benefit to the applicant as there can be no negative equality (See State of Bihar Vs. Upendra Narayan Singh (2009) 5 SCC 69). The decision in D.K. Gupta (OA No.230/2014 *supra*) is also not helpful to the applicant in view of the decision of the Hon'ble Calcutta High Court in Babu Yohanan (*supra*).

12. In the circumstances and for the aforesaid reasons, the OA is dismissed being devoid of any merit. No costs." (Emphasis supplied)

8. In view of the foregoing, the respondents pleaded that the instant applicant cannot be granted the second MACP benefits by counting his ad hoc service.

9. The applicant drew attention to the judgments by the Tribunal in *Suresh Kumar and Anr. Vs. Secretary M/o Shipping and Ors.* in OA No. 6/2011 dated 29.11.2010 and thereafter in *H.A. Kohli v. Secretary, M/o Finance and Others* in OA No.1/2013 dated 26.12.2011, and in D.K. Gupta Vs. UOI in OA



No.230/2014 decided on 14.02.2017 and pleaded that his OA needs to be allowed on similar lines.

10. The matter has been heard at length. Shri M.K. Bhardwaj, learned counsel represented the applicant and Dr. Ch. Shamsuddin Khan, represented the respondents.

11. The issue relating to whether the service rendered on ad hoc basis, is to be counted for assessing the requisite service for granting of benefit under ACP/MACP or not, is no more *res integra*. Exactly the same question was considered by the Tribunal in OA No.200/2014 (Para 7 supra). The Tribunal therein had noted that in case a mistake has happened in the case of one Shri Phool Singh, which was relied upon by the applicant, the same cannot be replicated in case of other applicants.

12. Moreover, this question has also been considered by the Hon'ble High Court in ***Sudesh Kumari Sareen v. Union of India and Ors.*** (WP(C) No.4379/2010 decided on 03.02.2011), and it has been held that ad hoc service cannot be counted for grant of ACP/MACP



benefits. The relevant part of this judgment is reproduced below:-

"10. We have heard the learned counsel for the parties. This cannot be disputed by the learned counsel for the petitioner that under the ACP Scheme especially para 2, employees such as casual employees (including those with temporary status), substitutes, ad-hoc and contract employees are categorically excluded for qualifying for benefits under the aforesaid scheme.

xxxx xxxx xxxx

14. Considering the totality of facts and circumstances the petitioner has failed to make out any illegality or perversity in the order dated 12th March, 2010 of the Tribunal declining to reckon her service as an ad- hoc employee towards grant of ACP Scheme. In the circumstances, there are no grounds to interfere with the order of Tribunal and the writ petition is, therefore, dismissed."

13. The respondents had also annexed a copy of initial appointment letter dated 05.12.1984 in respect of instant applicant. This reads as under:-

"You are hereby offered the post of Electrician in the pay scale of Rs.425-15-500-EB-15-560-700 in the Common Facility Service Centre Farrukhabad under the office of the Development Commissioner (Handicrafts) on purely Ad-hoc basis. The post is purely temporary under Plan Scheme.



You will have to complete all documents/declaration prescribed by the department before joining. You are required to join immediately. The formal appointment letter shall be issued after your joining."

14. It is clear that applicant's initial appointment was ad hoc whereas the cases relied upon by applicant are in respect of those whose appointment was on temporary basis, as is noted from relevant judgments.

15. Further, the policy directives on the subject vide OM dated 19.05.2009 also specify to count regular service for granting MACP benefit. Thus, ad hoc service cannot be counted for this purpose.

16. The judgments relied upon by applicant in A.K. Malhotra vs. Secretary, Ministry of Textiles (OA No.366/2012 dated 10.10.2012) and D.K. Gupta Vs. Secretary, Ministry of Textiles (OA No.230/2014 dated 14.02.2017) are in a different context and facts are not similar to instant case. Hence, these are of no help to applicant.

17. In view of the foregoing the ad hoc service cannot be counted for granting benefit under ACP/MACP



benefit, as has been sought by the applicant in the instant OA. OA is dismissed being devoid of merits. There shall be no order as to costs.

(Pradeep Kumar)
Member(A)

(Justice Vijay Lakshmi)
Member(J)

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