

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 415/2001

New Delhi, this the 30th day of January, 2006

HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

Shri P.C. Joshi
Working as Skilled Worker Gr.1
Small Industries Services Institute,
Extension Centre, Balsahyog,
Connaught Circus, New Delhi.

.... Applicant.

(By Advocate Sh. D.S. Mahendru for Sh. S.K. Anand)

VERSUS

Union of India, through

1. Secretary,
Ministry of Industry,
Udhyog Bhawan,
New Delhi.
2. The Director,
Small Industries Services Institute,
Okhla Industrial Estate, New Delhi.
3. The Asstt. Director,
SISI Extension Centre, Balsahyog,
Connaught Circus, New Delhi.

... Respondents.

(By Advocate Shri Rajeev Kumar for Shri J.B. Mudgil)

ORDER (ORAL)

By Hon'ble Mr. Mukesh Kumar Gupta:-

This OA was earlier dismissed vide order dated 09.10.2001. Since the said order had been carried to Hon'ble High Court of Delhi vide W.P. (C) No. 338/2002, which was ultimately allowed vide order dated 17.3.2005 with a direction to decide the entire dispute raised by the applicant afresh in accordance with law, we heard this matter on merits.

The relief prayed for in this OA reads as follows:-

- "a) allow the above OA with costs against the respondents;

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- b) direct the respondents to grant the benefit of second financial upgradation in the scale of Rs.5000-8000/- to the applicant in terms of the provisions of the ACP Scheme w.e.f. the date the applicant has completed 24 years of continuous service;
- c) direct the respondents to pay consequential benefits to the applicant on account of the said upgradation till date;
- d) direct the respondents to pay interest @ 24% on the said consequential benefits to the applicant;
- e) to grant any other and further relief as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case in favour of the applicant."

2. The admitted facts of the case are that the applicant was initially appointed as Skilled Worker purely on "ad hoc basis" w.e.f. 01.2.1975 with the condition that the said appointment "will not confer any right" for indefinite continuance or for seniority or for confirmation in the said grade. Subsequently, based on recommendations of DPC, he was appointed along with others in the regular capacity to the said post vide order dated 01.5.1985 "with effect from 23rd April, 1985". Since the respondents denied him in-situ promotion despite his claim, he instituted OA No.574/2000 which came to be allowed vide order dated 21.12.2000 holding that the applicant was: "entitled to grant the grant of insitu promotion w.e.f. 1.2.98 i.e. one year after the date of reaching the maximum of his present scale in terms of OM dated 13.9.91 (Annexure A-1)." Accordingly the respondents were directed to consider him for grant of in-situ promotion in the higher pay scale w.e.f. 1.2.98 with consequential benefits.

In compliance of the aforesaid judgment, vide order dated 19.2.2001, the applicant was allowed the next higher pay scale of Rs.4500-7000/- w.e.f. 01.2.1998 till 08.8.1999 when the benefit got dovetailed into new scheme of APC. Subsequently, the applicant made representation, followed by reminders, before the Competent Authority requesting them to grant second financial upgradation under the provisions of ACP Scheme on completion of 24 years of

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continuous service and to fix his pay in the pay scale of Rs.5000-8000/-, which remained unconsidered and undecided. Hence the present OA.

3. The contentions raised by the applicant are two fold: namely that he has rendered 24 years of service counting from the date of his initial appointment i.e. 01.2.1975 and, therefore, he was entitled to second financial upgradation under DOP&T OM dated 09.8.1999 dealing with the Assured Career Progression and financial upgradation. The next contention urged was that since the applicant was appointed as Skilled Worker Grade-I through direct recruitment in the year 1975, to which post he had been regularized in the year 1985, the period from his initial appointment on 01.2.1975 to the date of 23.4.1985 when he got regularization to the said post, be deemed to be regular in terms of the law laid down by the Hon'ble Supreme Court in Direct Recruit II Engineering Officers Association vs. State of Maharashtra [1990 SCC (L&S) 339], Baleshwar Das vs. State of U.P. [AIR 1981 SC 41] and R. Hariharan and Others vs. K. Balchandran Nair and Ors. [(2000) 7 SCC 399].

4. The respondents contested the applicant's claim and stated that for grant of second financial upgradation, an official is required to complete 24 years of "regular service" as laid down under DOP&T OM dated 09.8.1999 and not "continuous service". The term "regular service" for the purpose of ACP, as per aforesaid OM, means "eligible service counted for regular promotion in terms of relevant recruitment / service rules." As the applicant was appointed purely on ad hoc basis in the year 1975, he was not entitled to count 24 years of service beginning with the year 1975. Since he was appointed on regular basis only in the year 1985, he has not rendered 24 years of regular service and, therefore, he was not entitled to second financial upgradation. The applicant has already been granted the benefit of ACP i.e. first financial upgradation, w.e.f. 09.8.1999 when

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the said scheme became applicable. Even as per the clarification issued by the DOP&T vide OM dated 10.2.2000, under point 11, the query as to whether the employee appointed on ad hoc basis and subsequently regularized, the ad hoc service was to be counted towards increment as well as ACP, it was clarified in specific that such service cannot be counted and it is only the regular service, which counts for the purpose of regular promotion as well as ACP benefits.

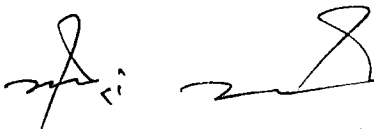
5. We have heard learned counsel for parties at length and perused the pleadings carefully. The first and foremost question which needs to be determined is whether the applicant satisfies 24 years of "regular service" as required under DOP&T OM dated 09.8.1999 for grant of second financial upgradation or not. A perusal of the relief prayed for, reproduced hereinabove, would go to show that it is not the case of the applicant that the respondents should be directed to count 24 years of his regular service from the year 1975 when he was appointed on ad hoc basis. There is no specific relief prayed on this aspect. No material has been placed on record to justify as to whether the applicant was appointed in the year 1975 to the post in question "in accordance with rules", which is the condition precedent for claiming himself to be a regular employee. The term "regular service" employee under DOP&T OM dated 09.8.1999 has a direct nexus and correlation with the regular appointment made. Since it is an admitted fact that the applicant had been appointed on regular basis vide order dated 01.5.1985, "w.e.f. 23rd April, 1985", which order has not been challenged before any court of law at any point of time, applicant's services cannot be deemed to be regular any time anterior to the said date. Such being the facts, in our considered opinion, the applicant's services have to be counted only from 23rd April, 1985 and not prior to the said date. Examining the case from this angle, we find that the applicant has not rendered 24 years of "regular service", which is a condition precedent for grant of second financial upgradation

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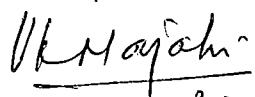
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under the aforesaid DOP&T OM. The judgments relied upon by the applicant, in our considered view are not applicable in the facts and circumstances of the present case. Therefore, we find no infraction, illegality etc. on the part of respondents in not according such benefit.

6. In view of the discussion made hereinabove, the OA is found to be devoid of any merit and the same is accordingly dismissed. No costs.


(Mukesh Kumar Gupta)
Member (J)

/gkkd


30.1.06
(V.K. Majotra)
Vice-Chairman (A)