CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/021/01288/2014

HYDERABAD, this the 5th day of November, 2020

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

M.Satyanarayana S/o Late M.Mallappa,
56 years, Assistant , % Geological Survey
of India, Party Bill Section, Southern
Region, Bandlaguda, Hyderabad-500 068,
R/o H.No.12-2-417/42,Sarada Nagar Colony,
Karwan, Hyderabad. ...Applicant

(By Advocate : Mr.M.Panduranga Rao)

Vs.

1.Union of India represented by its Secretary,
Ministry of Mines, Department of Mines,
Shastri Bhavan, New Delhi-110 001.

2.The Director General, Geological Survey of India,
(CHQ, 27, J.N.Nehru Road, Kolkatta-700 016.

3.The Additional Director General, Geological
Survey of India, Southern Regional Office,
Personnel Management Branch, GSI Complex,
Bandlaguda, Hyderabad-500 068.

4.The Deputy Director General, Administrative
Office, Geological Survey of India, S.R.
Hyderabad-500 068.

5.Pay and Accounts Officer,
Geological Survey of India, S.R.
Bandlaguda, Hyderabad-500 068. ....Respondents

(By Advocate : Mr.T.Hanumantha Reddy, Sr. PC for CG)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA has been filed in regard to the grant of MACP to the applicant by reckoning adhoc service.

3. Brief facts of the case as narrated in the OA are that the applicant was initially appointed as LDC in the respondents organization through a regular process of recruitment vide Memo dt. 14.08.1981. He claims that the Notification does not indicate that the post has to be filled up on adhoc basis. The applicant stated in para 4.II of the OA that, when his services were sought to be terminated after six months of his appointment, he along with 28 other candidates filed WP No. 157/1982 before the Hon'ble High Court and an interim order was issued to continue the services of the applicant. Thereafter, the case was transferred to this Tribunal on its formation. In the meanwhile, respondents absorbed the applicant and therefore, the case was closed. Services of the applicant were regularized vide order dt.11.02.1986. Thereafter, applicant represented for financial upgradation under MACP which was approved by Director General, Geological Survey of India vide order dt. 16.09.2013 by considering the initial appointment of the applicant in 1981 as regular for the purpose of ACP/MACP and concurrence of the DG, GSI was also communicated vide Officer Order dt. 28.04.2014. Based on the said approval, 2nd and 3rd financial upgradations were granted. Accordingly, respondents refixed the pay of the applicant. However, the Pay and Accounts Officer (PAO) took an objection stating that MACP has to be granted reckoning only the

regular service rendered. Accordingly, a show cause notice was issued on 08.08.2014 stating that there is no provision empowering the competent authority to ratify adhoc services as regular service and that MACP benefit has to be correspondingly withdrawn. On submitting the reply, impugned order dt. 15.09.2014 was issued cancelling the 2nd ACP and the 3rd MACP benefit granted to the applicant vide order dt.16.09.2013. The respondents cancelling the benefit after one year of granting the benefit has led to the filing of the OA.

4. The contentions of the applicant are that the adhoc service, when followed by regularization, is to be treated as regular service. Earlier, similar objections were raised by the PAO wherein it was clarified by the DG vide Office Order dt. 26.08.2013 and 16.09.2013 stating that the applicant is eligible for ACP/MACP. Applicant was never appointed on adhoc basis and on the contrary appointment was made after following the due process of selection. The objection raised by the PAO is illegal and the 2nd/ 3rd Financial Upgradations were granted vide order dt. 16.09.2013, after following rules on the subject. Show cause notice issued was an empty formality since decision was already taken to recover the amount. Similarly placed persons like Mr.G. Ramesh, Mr. R. Dhatri, Mr. S.A. Khader and Mr. W. Jagpal Das have been given pay scale vide office order dt. 05.08.2011 by considering MACP benefit, after taking into consideration adhoc service rendered by them, whereas the same benefit was denied to him. Respondents organization which is statutory body coming within the ambit of Article 12 of the Constitution of India, has to take decisions which are fair and equitable to all its employees and not

resort to discrimination. Having rendered 34 years of service, applicant asserts that he is eligible for financial upgradation in the intervals of 10, 20 & 30 years.

5. Respondents in their reply statement submit that the employment exchange forwarded the name of the applicant for filling up the LDC post on adhoc basis for a temporary period of 6 months. Appointment order was issued on 14.08.1981 as LDC on adhoc basis and the applicant joined on 21.08.1981. Thus, the initial appointment of the applicant was on temporary basis and when the respondents decided to dispense with the service of temporary employees, Hon'ble High Court of A.P issued an interim order in Writ Petition No.157/1982 on 12.01.1982 to continue their services. Hence, the services of the applicant were continued. Later, applicant cleared the competitive examination conducted by SSC for regularization of services and his services were regularized as LDC w.e.f. 15.01.1986. The Dy. DG (P), GSI in 2013 while on tour to Hyderabad gave consent for MACP with certain conditions. Accordingly, office order dt. 16.09.2013 was issued granting MACP benefit and pay was fixed in Grade Pay of Rs.4600/-. PAO took objection stating that MACP is granted for regular service rendered vide Memo dt. 03.07.2014. As per DOPT Memos dt. 19.05.2009 and 30.03.1988 employees appointed on adhoc basis/ contract basis are ineligible for MACP. Therefore, show cause notice was issued on 08.08.2014 stating that grant of MACP was against DOPT orders and that there is no statutory provision for the competent authority to regularize the adhoc services of the applicant. Moreover, DOPT memo dt. 30.03.1988 makes it clear that the adhoc appointment cannot be given beyond one year.

Representation of the applicant was examined and rejected. The competent authority cancelled the MACP benefits based on rules and Central Head Quarters advice dt. 31.07.2014. Services of Mr. Ramesh, Smt. R. Dhatri, Mr. S.A. Khader and Mr. W. Jagpal Das were terminated after six months as they were appointed for a period of 6 months temporarily. Aggrieved, the cited employees filed WP No. 157/1982 before the Hon'ble High Court of AP. Interim order was issued to continue the petitioners. Subsequently, the writ petition was withdrawn by the writ petitioners. Later, the Staff Selection Commission issued a notification for conduct of the departmental competitive examination for promotion to UDC cadre in March 1987. Employees who have 5 years of service in LDC cadre are eligible to appear in the examination. The services of officials referred to supra were regularized only on 09.05.1984 and therefore, they were ineligible to appear in the examination scheduled to be conducted in March 1987. Consequently, their request was rejected. Thereupon, OA 194/1987 was filed which was allowed on 01.11.1989 directing that their services be treated as regular from 1981 and they be allowed to appear in the UDC examination. Other similarly situated employees filed OAs 509/1991 and OA 667/1990 seeking similar benefit as was granted in OA 194/1987. Tribunal after detailed examination of both the OAs dismissed them on the ground that the Hon'ble Supreme Court laid down a law stating that the adhoc services cannot be counted for seniority etc. Thereafter, applicants in OAs 509/1991 and OA 667/1990 filed RAs 96/92 and 97/92 respectively which were also dismissed on 28.08.1992. Resultantly, the order in OA No.194/87 is not applicable to the applicant. After issuing the show cause notice and after considering the grounds raised, benefits under MACP were

cancelled. Thus, there is no discrimination of the applicant and rules have been scrupulously followed in taking the decision of cancellation.

6. Heard both the counsel and perused the pleadings on record.

7. I. It is not in dispute that the applicant was recruited when his name was forwarded by the employment exchange to the respondents organization. The respondents have confirmed that the applicant was recruited on adhoc basis on 14.08.1981 and he joined on 21.08.1981. The applicant was appointed on temporary basis for six months. Thereafter, when the respondents terminated the services of some employees who have completed six months services, they approached the Hon'ble High Court in WP No. 157/1982 wherein it was ordered that their services should be continued. Respondents therefore continued the applicant as well. In the meanwhile, applicant appeared in the SSC examination conducted for regularization of services and his service was regularised on 15.01.1986. Later, when the Dy. DG, GSI was on tour to Hyderabad, employees approached him for grant of MACP scheme and for regularization of adhoc services of those who have been appointed in LDC post on adhoc basis by the respondents. Based the order of the DG, GSI adhoc service was regularized and ACP II and MACP III benefits were granted. Thereupon, PAO took objection stating that under MACP scheme, financial upgradation can be granted for regular service rendered only and not by including adhoc basis. It was also pointed out that there is no statutory provision for the competent authority to regularize adhoc service of the applicant. Besides, even as per the DOPT OM dt. 30.03.1988, adhoc basis can be granted only for a period one year.

II. In regard to grant of MACP for adhoc service, rules are very clear as brought out in paras 3 & 9 of MACP Scheme, which are extracted hereunder:

> *"3. ....Casual employees, including those granted 'temporary status' and employees appointed in the Government only on adhoc or contract basis shall not qualify for benefits under the aforesaid Scheme. The details of the MACP Scheme and conditions for grant of the financial upgradation under the Scheme are given in Annexure-l."*

Clause 9 of Annexure I reads as under:

> *"9. 'Regular service' for the purposes of the MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Service rendered on adhoc/contract basis before regular appointment on pre-appointment training shall not be taken into reckoning. However, past continuous regular service in another Government Department in a post carrying same grade pay prior to regular appointment in a new Department, without a break, shall also be counted towards qualifying regular service for the purposes of MACPS only (and not for the regular promotions). However, beneflts under the MACPS in such cases shall not be considered till the satisfactory completion of the probation period in the new post."*

Thus, as can be seen from the above, only regular service has to be reckoned for grant of financial upgradation under MACP. Even the DOPT OM dt. 22.10.2019 issued on the subject of MACP also reiterated the same. Therefore, the adhoc service rendered by the applicant cannot be reckoned for grant of benefits sought.

III. Consequently, the respondents have issued the show cause notice on 08.08.2014 which reads as under:

> *"2. As pointed out by the pay & Accounts Officer, Hyderabad that as per the extant rule position, DOPT Order No:33031/3/2008-Estt, Dated;.19.05.2009 the Ad-hoc service of the employees cannot be counted for the purpose of granting the ACP/MACP and also there is no statutory provision empowering the competent authority to count / ratify the adhoc service rendered by the employees as regular service. Consequently, the said office order suffers from the patent infirmity of lack of the support of codal provisions of Government of India governing the said issue. The Dy. Director General (P), Central Head Quarters, Kolakata on consultation,*

advised the Southern Regional Office to take appropriate administrative decision on the issue.

3. Keeping in view of the facts and circumstances the ADG, SR, proposed to cancel the above said Office Order inter alia No. 2209/A-11014/1/MACP/2013/PMB dt. 13/16.09.2013. Hence, notice is issued to all the concerned to provide opportunity to represent their grievances/ objections, if any, within 10 days from the issuance of the instant notice. It is also informed that no delayed representations received beyond the stipulated period will be entertained."

The notice issued has made it explicit the infirmities involved in granting ACP/MACP benefits granted to the applicant, citing the relevant rules. Thus, the applicant was given reasonable opportunity to present his point of view. Only after his reply MACP/ACP benefits granted were withdrawn.

IV. The applicant has submitted that similarly placed employees in OA No. 194/1987 have been given the benefit of MACP Scheme and therefore, he should also has to be granted the benefit. However, when the applicant and other similarly placed employees approached the Tribunal in OA 509/1991 and OA 667/1990 seeking extension of relief as was granted in OA 194/1987, this Tribunal dismissed the said OAs. Relevant portions of the orders of the Tribunal in the said OAs, are extracted as under:

OA 509/1991

" 5. In the case before us, the September, 1981 order not done in accordance with rules as admitted by both sides. It was only a stop gap arrangement. The first regular selection of the applicants in accordance with rules (emphasis supplied) was the one dt. 9.5.84. In view of the clear law laid down by the Honrble Supreme Court subsequent to the pronouncement of the Judgement of this Bench dt. 1.11.89 in O.A.No.194/87 we have to follow the law laid down by the Honrble Supreme Court. We, therefore, hold. that the adhoc service rendered by the applicants prior to 9.5.84 cannot be treated as regular service and, therefore, cannot be counted for any consequential purpose like seniority etc. We, therefore, dismiss the application with no order as to costs."

OA No. 667/1990

"3. We have examined the case and heard the rival sides. We find that it was only from 9.5.84 that he was regularly appointed as LDC. By a separate judgment today in OA No. 509/91, we had held, following law laid down by the Hon'ble Supreme Court, that seniority and associated

> *factors can be reckoned only from the date of regular appointment in a particular cadre. Hence, following the directions given in that OA, we dismiss this OA also with no order as to costs."*

As can be seen from the above orders, Tribunal after considering the orders of the Hon'ble Supreme Court has held that adhoc service rendered by the employees cannot be counted for seniority, etc. It was also specifically held that adhoc service rendered prior to 9.5.1984 cannot be treated as regular service. Therefore, the order of the Tribunal in OA 194/1987 shall be inapplicable to the case of the applicant. In fact, in *State of Haryana vs Haryana Veterinary & AHTS Association and another, (2000) 8 SCC 4*, the Hon'ble Supreme Court held that adhoc service cannot be counted for financial upgradation under MACP, as under:

> *"7. Coming to the circular dated 2-6-1989, issued by the Financial Commissioner and Secretary to the Government of Haryana, Finance Department, it appears that the aforesaid circular had been issued for removal of anomalies in the pay scale of Doctors, Deputy Superintendents and Engineers, and so far as Engineers are concerned, which are in Class I and Class II, it was unequivocally indicated that the revised pay scale of Rs 3000 to Rs 4500 can be given after completion of 5 years of regular service and Rs 4100 to Rs 5300 after completion of 12 years of regular service. The said Financial Commissioner had issued yet another circular dated 16-5-1990, in view of certain demands made by officers of different departments. The aforesaid circular was issued after reconsideration by the Government modifying to some extent the earlier circular of 2-6-1989, and even in this circular it was categorically indicated that so far as Engineers are concerned, they would get Rs 3000 to 4500 after 5 years of regular and satisfactory service and selection grade in the scale of pay of Rs.4100 to Rs.5300, which is limited to the extent of 20% of the cadre post should be given after 12 years of regular and satisfactory service. The aforesaid two circulars are unambiguous and unequivocally indicate that a government servant would be entitled to the higher scale indicated therein only on completion of 5 years or 12 years of regular service and further the number of persons to be entitled to Patna High Court CWJC No.3071 of 2016 dt.08-08-2016 get the selection grade is limited to 20% of the cadre post. This being the position, we fail to understand how services rendered by Rakesh Kumar from 1980 to 1982, which was purely on ad hoc basis, and was not in accordance with the statutory rules can be taken into account for computation of the period of 12 years indicated in the circular. The majority judgment of the High Court committed serious error by equating expression "regular service" with "continuous service". In our considered opinion under the terms and conditions of the circulars dated 2-6-1989 and 16-5- 1990, the respondent Rakesh Kumar would be entitled for being considered to have the selection grade on completion of 12 years from 29-1-1982 on which date he was duly appointed against a*

> *temporary post of Assistant Engineer on being selected by the Public Service Commission and not from any earlier point of time. The conclusion of the majority judgment in favour of Rakesh Kumar, therefore, cannot be sustained."*

Therefore, in view of the legal principle laid down by the Hon'ble Supreme Court in the case cited as well as the observations of this Tribunal in OA Nos. 509/1991 & 667/1990 dt.05.06.1992, the applicant is not eligible for the financial upgradation under MACP Scheme by reckoning the adhoc service. DOPT rules cited make it further explicit that the applicant is ineligible for grant of MACP by reckoning adhoc service. We find no discrimination towards the applicant since the respondents followed the rule in rejecting the relief sought. Any benefit can be extended only as per rules and not otherwise. Hence, based on the rules and law referred to, we declare that the relief sought cannot be granted. Hence the OA being devoid of merit, deserves to be dismissed and accordingly dismissed. However, we are sure that the respondents would have granted financial upgradation under MACP Scheme to the applicant based on the regular service rendered by him. We are making this observation since we did not find any pleading either in the OA or in the reply statement in this regard.

There shall be no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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