

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/00037/2019

HYDERABAD, this the 19th day of October, 2020
(Reserved on 08.10.2020)



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

P. Venkateswaramma W/o Jagan Mohan Reddy,
Aged about 57 years, Occ : Assistant,
Central Administrative Tribunal,
Hyderabad Bench, Hyderabad-500004.

....Applicant

(By Advocate :Dr.A.Raghu Kumar)

Vs.

1. Union of India rep by its Secretary,
Department of Personnel and Training,
North Block, Central Secretariat,
New Delhi – 110001.
2. Union of India rep by the Registrar,
Central Administrative Tribunal,
Principal Bench, New Delhi.
3. The Registrar,
Central Administrative Tribunal,
Hyderabad Bench, Hyderabad.

....Respondents

(By Advocate: Mrs.K.Rajitha, Sr. CGSC)

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

2. The OA is filed in regard to the claim of the applicant for promotion to the post of Section officer.



3. Brief facts of the case, which require narration are that the applicant joined the Hon'ble High Court of Andhra Pradesh as Typist on 22.11.1983 and her probation was declared w.e.f. 1.3.1986. Thereafter, she went on deputation to the Central Administrative Tribunal, Hyderabad Bench on 25.9.1986 and later, got absorbed on 1.11.1989 in the LDC cadre. The pay of the applicant was fixed in L.D.C grade with effect from 1.7.1986 vide letter dated 29.10.1990. Applicant sought promotion as U.D.C by considering the services rendered as Typist in the Hon'ble High Court from 22.11.1983 and she was promoted as U.D.C on notional basis w.e.f. 1.10.1992 vide order dated 11.2.2008. Regular promotion to U.D.C cadre was given to her from 16.1.2008. Thereafter, applicant got promotion as Assistant on 1.1.2009, which she declined and the same was accepted by the respondents on 3.6.2009 with a condition that she will be debarred for promotion for one year. Later on, applicant was promoted as Assistant on adhoc basis for different spells of one year, each with small breaks of a few days in between 2011 and 2014, till she was regularly promoted as Assistant on 1.8.2014. Thereafter, applicant represented on 14.11.2018 to consider her for promotion to the post of Section Officer by reckoning the adhoc service rendered in Assistant Cadre which was rejected on 10.12.2018. Besides, applicant also sought ACP/MACP by considering the adhoc services rendered as Typist in the Hon'ble High Court, in the light of

the judgments of different benches of the Tribunal, which too, has not been decided in her favour. Aggrieved over the rejections, OA has been filed.

4. The contentions of the applicant are that she is eligible for ACP/MACP benefits as per the verdict of the Hon'ble Jodhpur Bench of this Tribunal in OA 97/2004, wherein it was held that the services rendered in State Govt. should be reckoned for grant of ACP/MACP benefits and the same was upheld by the Hon'ble High Court of Rajasthan and the SLP filed too got dismissed. Hon'ble Ernakulam Bench of this Tribunal granted similar relief in OA 720/2013 and this Bench also granted relief in OA 8/2017. Applicant also relied upon the judgment of the Hon'ble Principal Bench of this Tribunal in TA 1028/2009 to press her claim for considering the adhoc services rendered as Assistant for promotion to the post of Section Officer (Annexure A-XXII). There is one post of Section Officer vacant in Hyderabad Bench and several vacancies in different Benches of the Tribunal against which the applicant's request could be considered. Applicant also contends that as per the decision of the Hon'ble Supreme Court in Union of India & ors v. Balbir Singh Turn in Civil Appeal Diary No.3744/2016, dt.08.12.2017, MACP being part of the pay structure, it shall be effective from 01.01.2006 and not from 01.09.2008.

5. *Per Contra*, respondents state that the applicant sought multiple reliefs, which itself is a lacuna to consider grant of relief prayed for. Respondents while confirming the career graph, state that while granting promotion to the post of Asst. on adhoc basis, it was made clear that the period of adhoc service will not be counted for the purpose of seniority / promotion to the next higher grade. In addition, as per Recruitment Rules



one has to have 8 years regular service in Assistant grade, which the applicant does not possess, to be eligible to be promoted as Section Officer.

By declining promotion as Assistant, she has become junior to those who accepted promotion. Seniors to the applicant have not been made parties and hence, OA suffers from non-joinder of parties. However, applicant was promoted on adhoc basis w.e.f. 26.7.2019 as Section Officer, by relaxing rules and by considering the length of adhoc service in the Assistant grade.

The same has been extended till her date of retirement on 31.10.2020. In respect of the service rendered in the Hon'ble High Court, it shall be available for the purpose of drawing pensionary benefits only. Applicant accepted the conditions for absorption in Central Administrative Tribunal and accordingly, seniority was fixed which remains unchallenged. ACP/MACP benefits are granted for the service rendered as Central Govt. employees only. In fact, claim for promotion as UDC by considering services as Typist in the Hon'ble High Court of A.P. was rejected and therefore, re-agitating on the settled issue and that too belatedly, is untenable. The judgment of the Hon'ble Apex Court in Balbir Singh Turn is not applicable to the case of the applicant. On the contrary, Hon'ble Apex Court in U.O.I v. C.Girija in CA No.1557/2019 has held that stale claim would not become alive by making a representation to the employer belatedly, which applies to the case of the applicant.

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

7. I. The dispute perse is in regard to counting the adhoc service rendered in the Assistant grade by the applicant to be considered for

promotion to the post of Section Officer. There is no dispute about the fact that the applicant was granted adhoc promotion from 2011 to 2014 with short breaks due to lack of vacancies. The adhoc promotion was granted with a clear condition that the adhoc services rendered as Assistant will not be reckoned for the purpose of seniority/ promotion in the next higher grade. This is in sync with the law laid down by the Hon'ble Apex Court in Kum. C. Yamini vs. The State of Andhra Pradesh on 14.08.2019, Civil Appeal No.6296 of 2019, as under:



16. In the civil appeal arising out of S.L.P. (C)No.28302 of 2018, learned counsel for the appellants has submitted that the appellants be at least given the benefit of counting the service rendered by them in Fast Track Courts for pensionary and other benefits. In support of his claim, learned counsel placed reliance on the judgment of this Court in Mahesh Chandra Verma v. State of Jharkhand & Ors.⁶ wherein this Court has considered the very same issue and held that the service rendered as Fast Track Court Judges is to be counted for (2018) 7 SCC 270 C.A .@ S.L.P(C) No.20990/17 etc. etc. their length of service, for the purpose of determining their pension and other retiral benefits.

17. We have perused the aforesaid judgment and we are in agreement with the view taken by a two Judge Bench of this Court. Resultantly, while rejecting their claim for grant of seniority from the date of their initial appointment as Fast Track Court District Judges and other reliefs, we direct that the appellants and all others who are similarly placed are to be given benefit of counting their service rendered as Fast Track Judges, for the purpose of pensionary and other retiral benefits. With the above directions and observations the civil appeals are disposed of with no order as to costs.

As per the law laid down above, applicant is eligible for retiral benefits based on the length of service including the service rendered as Typist in the Hon'ble High Court. The adhoc service put in by the applicant in the Assistant cadre will not entitle her to claim for seniority in the said cadre for considering her promotion to the post of Section Officer. The recruitment rules prescribe 8 years of regular service in Assistant Cadre to be promoted as Section Officer, which the applicant does not possess. The judgment of the Hon'ble Principal Bench of this Tribunal in TA No.1028/2009 relied upon by the applicant, will not be of any assistance in view of the observation of the Hon'ble Apex Court cited supra. Besides,

after accepting the promotions all along in different cadres accepting the seniority fixed, seeking promotion to a higher grade without a challenge to the said seniority is not an acceptable legal proposition. It requires no reiteration that seniority is a major element in granting promotions. Hence, relief sought to the extent of promotion to the post of Section Officer is not legally tenable.



II. However, when it comes to the aspect of regulating ACP/MACP benefits, as pleaded by the applicant at para 4(x) of the OA, the service rendered by the applicant as Typist in the Hon'ble High Court of A.P has to be considered. This issue fell for consideration before the Hon'ble Jodhpur Bench of this Tribunal in OA 97/2004, which was allowed on 12.09.2006 and the challenge to the same was dismissed by the Hon'ble High Court of Rajasthan in WP No.504/2008 vide order dt.05.04.2010. The same fate befell in respect of the SLP filed before the Hon'ble Supreme Court. Indeed, the Hon'ble Jodhpur Bench quashed the DOPT memo dated 7.9.2001 which was standing in the way of granting eligible ACP/MACP by taking into consideration service rendered in the State Govt. Similar relief was granted by the Hon'ble Ernakulam Bench of this Tribunal in OA No.720/2013 and this Bench in OA No.8/2017. Respondents have not referred to these judgments in the reply statement. Further, there is no legal document on record contravening the finding of the Hon'ble Jodhpur Bench of this Tribunal that the service rendered in the State Govt. shall be considered for grant of ACP/MACP. Therefore, the stand of the respondents that the service rendered by the applicant from the date of

absorption in the Central Administrative Tribunal is to be considered for the purpose of ACP/MACP is not in consonance with law.



III. In respect of the date of implementation of the MACP scheme, Hon'ble Supreme Court has held in *Union of India v Balbir Singh Turn* in Civil Appeal Diary No.3744/2016, vide judgment dt.8.12.2017 that the MACP benefits have to be granted from 1.1.2006 as per the cabinet decision accepting the recommendations of the 6th CPC. The relevant portion of the judgment is extracted here under:

“6. The question that arises for decision is whether the benefit of MACP is applicable from 01.01.2006 or from 01.09.2008.

7. The answer to this question will lie in the interpretation given to the Government Resolution, relevant portion of which has been quoted hereinabove. A bare perusal of Clause (i) of the Resolution clearly indicates that the Central Government decided to implement the revised pay structure of pay bands and grade pay, as well as pension with effect from 01.01.2006. The second part of the Clause lays down that all allowances except the Dearness Allowance/relief will be effective from 01.09.2008. The AFT held, and in our opinion rightly so, that the benefit of MACP is part of the pay structure and will affect the grade pay of the employees and, therefore, it cannot be said that it is a part of allowances. The benefit of MACP if given to the respondents would affect their pension also.”

It is immaterial as to whether the employee is a defence or a civilian employee since the issue is about the date of implementation of the 6th CPC recommendations applicable to all Central Govt. employees. It is important that the essence of a judgment is of paramount importance, as observed by the Hon'ble Supreme Court in *Anupal Singh and ors v State of Uttar Pradesh* in Civil Appeal Nos.4815 of 2019 with 4816-36/2019 decided on 30.9.2019 (2020) 2 SCC 173, as under:

*68. Reiterating the above principle, in *Director of Settlements v M.R Apparao* (2002)4 SCC 638 it was held as under:*

“7. So far as the first question is concerned, Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The

aforesaid Article empowers the Supreme Court to declare the law. It is therefore, an essential function of the Court to interpret a Legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that form the ratio and not any particular word or sentence A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered..... The law which will be binding under Article 141 would, therefore, extend to all observation of points raised and decided by the Court in a given case."



The essence of the judgment in Balbir Singh Turn cited supra, is to grant the MACP benefits from 1.1.2006. This Tribunal in OA No.477/2014 vide order dt. 24.01.2020 allowed a similar relief following the legal principles laid above. The judgments of the superior Judicial fora and that of the Coordinate Benches have to be adhered to as held by Hon'ble Supreme Court in S.I. Rooplal v. Lt. Governor [(2000) 1 SCC 644]. Therefore, the claim for grant of ACP/MACP benefits by taking into consideration the Service put up by the applicant in the Hon'ble High Court of A.P. and extending the said benefits from 1.1.2006, as per the eligibility of the applicant is fair and hence, has to be considered.

IV. The contention of the respondents in regard to the claim being belated does not hold water since any change in pay /pension is a continuous cause of action. Improper grant of ACP/MACP will impact fixation of pay/pension which will be a source of injury to the applicant on a monthly basis. Hence limitation, delay and latches would not come into play in respect of grant of ACP/MACP and consequential benefits thereof, as pleaded for by the Ld. Counsel for the applicant.

V. Therefore, in view of the aforesaid circumstances, respondents are directed to consider as under:

- i. To revise the pay of the applicant, by considering the service rendered by her in the Hon'ble High Court of Andhra Pradesh as Typist for the purpose of grant of ACP/MACP from the date she is eligible.
- ii. To refix the pay of the applicant by granting MACP benefits from 1.1.2006 in accordance with the judgment in Balbir Singh Turn cited supra.
- iii. Pension of the applicant has to be fixed based on (i) and (ii) above.
- iv. Arrears of pay by re-fixation of pay as at (i) & (ii) above has to be restricted to a period of 3 years prior to the date of filing of the OA, in accordance with para 5 of the judgment of the Hon'ble Supreme Court in Union of India v. Tarsem Singh in Civil Appeal Nos. 5151-5152 of 2008.
- v. Time allowed to implement the order is three months from the date of receipt of this order.
- vi. With the above directions, the OA is disposed of, with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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