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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.456/2018

Date of Decision: 20.02.2020.

CORAM: R. VIJAYKUMAR, MEMBER (A)
R.N. SINGH, MEMBER (J)

1. Ms. Nalini Siva Kumar
Flat No.9, Bldg. No A-3,
Balaji Krupa Coop Hsg. Society,
Sector 28, Nerul West,
Navi Mumbai 400 706.
2. Mr. P.J. Joseph
Flat No.204, Vijay Tower,
Sector 21, Nerul (West),
Navi Mumbai 400 706.
3. Mr. V.K. Sinha
Flat No.901/A, Nav Jeevan,
CGS Colony, Sector 5,
Antop Hill, Mumbai 400 037.

... *Applicants*

(By Advocate Ms. Rujju R. Thakker)

VERSUS

1. The Chief Controller of Accounts
Internal Audit Wing, Ministry of Finance,
Govt. of India, ACGR Bldg.,
Room No.413, New Delhi 110 002.
2. The Registrar
Customs, Excise & Service Tax Appellate
Tribunal, West Block-2, R.K. Puram,
New Delhi 110 066.
3. The Deputy Registrar,
3rd Floor, Jai Centre, 34,
P.D' Mello Road, Masjid Bunder (E),
Mumbai 400 009.

... *Respondents*

(By Advocate Shri R.R. Shetty)

ORDER (Oral)*Per : R. N. Singh, Member (J)*

The Applicants, 03 in number, have filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 to challenge the order dated 27.11.2017 (Annex. A-2), order dated 19.04.2018 Annex.A-1) and order dated 05.06.2018 (Annex.A-2A) vide which the respondents have withdrawn the benefits granted to the applicants under the Non Functional Selection Grade (*hereinafter referred to as NFSG*) keeping in view the objections raised by the Audit authorities.

2. The brief facts leading to the present OA are that the Respondent Nos. 2 and 3 have given an Advertisement in the Employment News dated 6-12 October 2001 (Annex.A-32 Colly) inviting applications for various posts to be filled on deputation/absorption in the Mumbai Bench of the Customs and Excise (Appellate Tribunal) Mumbai Bench, Mumbai. Subsequently, the Customs Excise and Gold (Control) Appellate Tribunal is notified as Customs, Excise and Service Tax Appellate Tribunal. In the said Advertisement, besides other posts, the

post of Sr. Private Secretary in the Pay Scale of Rs.7500-12000 was also advertised. The requisite qualification to be eligible for consideration for the post of Sr. Private Secretary reads as below:

i) *Officers under Central Government holding the analogous post on regular basis or*

ii) *with three years regular service in the post in the scale of Rs.6500-10500 or*

iii) *07 years regular service in the post in the scale of Rs.5500-9000 or equivalent and (b) possessing five years experience in stenography work (English).*

3. In pursuance of the aforesaid Advertisement, the applicants working in the Central Government and fulfilling the aforesaid conditions by virtue of working in the Pay Scale of Rs.5500-9000 and possessing five years experience in stenography (English) applied and after due consideration by the respondents, were selected for being appointed on deputation basis under the Respondent Nos. 2 & 3 to the post of Sr. Private Secretary in the Pay Scale of Rs.7500-12000. In pursuance of such selection, the Applicant no.1 joined on 30.09.2002 (FN), Applicant no.2 w.e.f.

01.11.2002 (FN) and the Applicant no.3 joined w.e.f. 01.07.2004. In view of there being a provision for considering absorption of such deputationists, the respondents considered and absorbed the applicants to the post of Sr. Private Secretary in accordance with the relevant rules and instructions on the subject and thus the applicant no.1 was absorbed as Sr. Private Secretary w.e.f. 13.01.2005, Applicant no.2 w.e.f. 10.03.2004 and the Applicant no.3 w.e.f. 29.06.2008.

4. The Government of India through Department of Expenditure, Ministry of Finance vide Resolution dated 29.08.2008 (Annex.A-12) provided for grant of the benefit of NFSG to a Group 'B' official. The Resolution dated 29.08.2008 in para 1(x) (e) provides as under:

"1(x)(e) Group B officers of Departments of Posts, Revenue, etc. will be granted Grade Pay of Rs.5400 in PB-2 on non-functional basis after 4 years of regular service in the grade pay of Rs.4800 in PB-2".

5. When the applicants have completed four years of service under the respondents, the respondents have granted the benefit of

NFSG to them in view of the resolution dated 29.08.2008. However, vide impugned order dated 27.11.2017 (Annex.A-2) it has been pointed out that as per Rule 11.2(iv) of Establishment and Administration, in the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant Recruitment Rules provide for Deputation/Transfer), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. Therefore, the said employee will get NFSG from the date of absorption in the grade of Pay Scale not from the date of deputation. Whereas the auditee has complied by quoting MACP rules which is not in order. The Respondents have withdrawn the benefits of NFSG granted to the applicants. In such view of the matter, the applicants have filed the present application and have prayed for the following reliefs:

"8.1 This Hon'ble Tribunal be pleased to quash and set aside the Recovery Order dated 19th April, 2018 and the letter dated 27th November 2017, referred to in the impugned Recovery order;

8.1.2 That this Hon'ble Tribunal be pleased to quash and/or set aside the impugned

order 2 dated 5th June, 2018 received by the applicants herein on 29th June, 2018; 19th June, 2018 and 21st June, 2018 respectively;

8.2 That this Hon'ble Tribunal be pleased to direct the respondents to refrain from initiating any recovery in terms of the Impugned orders of Recovery dated 19th April, 2018 and 5th June, 2018;

8.3 That this Hon'ble Tribunal be pleased to issue appropriate directions to Respondent No.2 to award/grant the benefit of second upgradation under MACPS as per the extant provisions and in accordance with law;

8.4 Such other and further reliefs as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the present case;

8.5 Costs."

6. Learned counsel for the applicants argues that person(s) with 07 years regular service in the post in the Scale of Rs.5500-9000 or equivalent and persons under the category (iii) of the eligibility in the advertisement possessing five years experience in stenography work (English) have been made eligible to apply for the post of Sr. Private Secretary in the Scale of Rs.7500-12000 and admittedly once the applicants have fulfilled such conditions, provided to there in the Advertisement, the applicants became entitled to count their

regular service from the date when they have been appointed to the post of Sr. Private Secretary under the Respondent Nos.2 and 3 on deputation basis for the purposes of counting of regular service to accord the benefit of NFSG. She further argues that regular service is the service which is rendered by the employee after being selected and appointed in accordance with the relevant Recruitment Rules. In this regard, she places reliance upon the judgment dated 16.01.2015 of a co-ordinate Bench of this Tribunal at Principal Bench in **OA No.833/2013 in the case of Nirmal Chandra Bhuyan Vs. Union of India** wherein the issue was as to whether the service of an Administrative Officer on deputation basis till the date of his absorption shall be counted as qualifying regular service for the purposes of promotion to the post of Assistant Director (Admn) or not. After referring to various judgments in para 6.5, the Tribunal has ruled as under:

"...6.5 Thus, it follows that an appointment made in consonance with the provisions of the Recruitment Rules against a vacancy, which is long term will be

deemed to be regular appointment. Similar observation has been expressed by Hon'ble Supreme Court in the case of K. Madhavan (supra) wherein it has been held that appointment made on a post on regular basis in contra distinction to appointment on adhoc or stop-gap or purely temporary basis would be deemed to be regular appointment."

7. She further argues that the issue involved in the present OA is no more res-integra in view of the law settled by the Hon'ble Apex Court in *K. Madhavan & Ors. Vs. Union of India* reported in (1987) 4 SCC 566 which has been referred and relied upon by the Hon'ble High Court of Gauhati (ITANAGAR BENCH) in the case of *Rajiv Gandhi University & Anr. Vs. Parimal Kumar Chakraborty*, reported in MANU/GH/0400/2009 para 6 & 7 reads as under;

"...6. While considering the present appeal, it is worth pointing out that though a person, in service in a given Department may have been absorbed, in the borrowed Department, with effect from a date later than the date of his joining the borrowed Department, on deputation, the period of service, which such a person spends, on deputation, in the borrowed Department, is required to be counted, as regular service, in the post in which he served on deputation. The only circumstance, where such a period, spent on deputation, cannot be counted is when the person is appointed, in the borrowed Department, on ad hoc or temporary basis. The reference, in this regard, may be made to the case of *K. Madhavan and Anr. Vs.*

Union of India & Ors. MANU/SC/0644/1987: (1987) 4 SCC 566, wherein the Apex Court observed, while considering the similar question, as under:

10. *The Rule 1975 rules which are relevant for the purpose do not explain what is meant by the expression on a regular basis. The expression has created some ambiguity in the eligibility Clause giving rise to this controversy. There can be no doubt that when a person is appointed to a post against a permanent vacancy on probation, his appointment is on a regular basis, but when a person is appointed to a post on a purely temporary or on ad hoc basis, the appointment is not on a regular basis. The expression 'on a regular basis' in the 1975 Rules cannot in our opinion, be interpreted to mean as on absorption in the CBI as SR. The general principle is that in the absence of any specific provision to the contrary, the length of service from the date of appointment to a post should be taken into consideration for the purpose of either seniority in that post or eligibility for the higher post. As no explanation has been given in the 1975 Rules of the said expression, we do not think it desirable to deviate from the established principle of computing the length of service for the period of seniority or eligibility for the higher post from the date of appointment. In our view, therefore, the expression 'on a regular basis' would mean the appointment to the post on a regular basis in contradiction to appointment on ad hoc or stopgap or purely temporary basis.*

7. *What transpires from the above observations, made in K. Madhavan (supra), is that unless a regularly appointed Government employee is appointed, on ad hoc basis or on purely temporary basis, on deputation, in the borrowed Department, the period, which he spends, on deputation, is required to be counted as a period of regular service for the purpose of determining his qualifying period of service*

to promotional post(s). In the present case, the respondent was, admittedly, appointed, on deputation, with effect from 10.5.1993, as an Assistant Engineer (Civil) by the appellant University. On his absorption, with effect from 1.10.1998, he became a regular employee of the University, with effect from 1.5.1998. This does not mean that the period of service, which the respondent had rendered between 10.05.1993 and 01.5.1998, on deputation, would evaporate or become non-existent or that the said period would not be treated as his period of regular service, in the post of Assistant Engineer (Civil), in the appellant University, for the purpose of computing the qualifying period of service for promotion to the post of Executive Engineer in the said University, for, even when the respondent had been serving, on deputation, without being absorbed, in the appellant University, his service was regular and, hence, notwithstanding the fact that he stands absorbed, with effect from 1.5.1998, the fact remains that while computing the requisite period of service for the purpose of promotion, his service has to be counted with effect from 1.5.1993 and not with effect from 1.5.1998 as has been contended by the appellant University. Considered from this angle, it becomes clear that the learned Single Judge was not incorrect in coming to the conclusion that the appellant's qualifying period of service shall be counted, with effect from 1.5.1993, for the purpose of considering him for promotion to the post of Executive Engineer. As we find no infirmity in the conclusion, so reached by the learned Single Judge, we see no reason to interfere with the directions given, in the writ petition, to the appellant University to consider the respondent-petitioner's case for promotion to the post of Executive Engineer in accordance with law. We are, however, of the further view that the respondent-petitioner's case for promotion shall be considered by the appellant University within a period of three months from today."

8. Learned counsel for the applicants submits that once the applicants have

fulfilled the requisite criteria to be appointed and absorbed to the post of Sr. Private Secretary, the respondents considering them not to be eligible for grant of the benefit of NFSG by reckoning the period of service prior to their absorption i.e. from the date of deputation is bad in the eyes of law.

9. In response to the notice from this Tribunal, the Respondents have filed reply and the with the assistance of reply so filed, Shri R.R. Shetty, learned counsel for the respondents submits that the applicants are not eligible for grant of NFSG by counting their period spent on deputation under the respondents in view of OM dated 25.05.1998 (Annex. R-2) of DOP&T. He argues that before being appointed on deputation, the applicants were not working in the post analogous to the Sr. Private Secretary and therefore, their services on deputation cannot be counted for the purposes of grant of NFSG. He further contends that NFSG is a benefit which is in alternative to the benefit of MACP/ACP, by the Government of India and grant of such benefit to the

applicants by counting the service rendered by them on deputation will lead to a situation where these persons will get the non-functional selection grade prior to a regular appointee who has been regularly appointed in the post of Sr. Private Secretary between the date of initial appointment of the applicants on deputation and their absorption as in consequence thereof such Sr. Private Secretary will draw lesser emoluments than the applicants and will seek upgradation of Pay Scale as has been done in several cases. Shri Shetty places reliance upon the judgment of the Hon'ble Supreme Court in the case of *Union of India Vs. Kuldip Singh Permer & Ors. Reported in 2003(6) Supreme 259*. However, Shri Shetty does not dispute the factual matrix of the case as contended by the applicants.

10. We have perused the pleadings available on record and have also gone through the judgments referred and relied upon by the learned counsels for the parties. We have also considered the submissions made

by the learned counsels for the parties carefully.

11. There is no dispute that for grant of NFSG in terms of the resolution dated 29.08.2008 (Annex.A-12), the requirement for a Group 'B' officer is to have four years of regular service in the Grade Pay of Rs.4800 in PB-II. This requirement is nowhere being connected to the benefit accruing to the employee under the MACP/ACP or any other scheme. This resolution extends the benefit of NFSG of entirely independent of any other scheme including the scheme of MACP/ACP. Thus, the only requirement for grant of benefit of NFSG would for a Group 'B' officer of the respondents to have the four years of regular service. Therefore, the issue for adjudication before us is as to whether the four years regular service is required to be reckoned from the date of applicants' appointment under the Respondent Nos.2 and 3 on deputation or only from the date of their absorption. In this regard, reliance made the learned counsel for the respondents on the law laid down by the

Hon'ble Apex Court in **Kuldip Singh Permer** (*supra*) is out of context inasmuch as in the said case the Hon'ble Apex Court was considering merely the seniority of the absorbee and not the regular service for grant of NFSG. The same would be evident from para 11 of the judgment in **Kuldip Singh Permer** (*supra*) which reads as under:

"11. In the present case, the relevant Government instructions had come into force on 29th May, 1986 while the tentative seniority list was issued on 24th October, 1986. The revised seniority list was issued much later. It was held by this court in Sub-inspector Rooplal and another vs. Lt. Governor through Chief Secretary, Delhi and others [2000 (1) SCC 644] that a person should get benefit of length of service rendered on regular basis in equivalent grade for the purpose of fixation of his seniority. The following observation needs to be quoted:

".....any rule, regulation or executive instruction which has the effect of of taking away the service rendered by a deputationist in an equivalent cadre in the parent department while counting his seniority in the deputed post would be violative of Articles 14 and 16 of the Constitution. Hence, liable to be struck down."

12. The definition of regular service has been considered by the Hon'ble High Court of Gauhati (ITANAGAR BENCH) in the case of **Rajiv Gandhi University** (*supra*) as well as by this Tribunal in **Nirmal Chandra Bhuyan** (*supra*) and in both these cases the law laid

down by the Hon'ble Apex Court in **K. Madhavan (supra)** has been followed.

13. In view of the facts and circumstances, the issue decided by the Hon'ble High Court and co-ordinate Bench of this Tribunal in **Rajiv Gandhi University (supra)** and **Nirmal Chandra Bhuyan (supra)** respectively, we are of the considered view that the applicants are entitle to reckon the period of regular service for the benefits of NFSG with effect from the date on which they have been appointed as Sr. Private Secretary under Respondent Nos. 2 & 3 on deputation basis and not from the date when they have been absorbed under the respondents.

14. In view of the aforesaid, **the OA is partly allowed.** The impugned orders dated 27.11.2017, 19.04.2018 and 05.06.2018 are quashed and set aside. The respondents are directed to consider and pass orders for grant of the benefit of NFSG to the applicants by reckoning their services with effect from the date on which they have been appointed as Sr. Private Secretary on

deputation basis and accordingly the respondents shall re-fix the pay of the applicants. The applicants shall be entitled for arrears on such re-fixation. The aforesaid exercise shall be completed by the respondents, as expeditiously as possible, and in any case within eight weeks of receipt of a certified copy of this order.

15. However, in the facts and circumstances, no order as to costs.

(R.N. Singh)
Member (J)

(R. Vijaykumar)
Member (A)

dm.

JJ
09/03/2020