

**Central Administrative Tribunal
Hyderabad Bench
Hyderabad**

OA No.477/2014

Date of C.A.V.: 20.01.2020

Date of pronouncement: 24.01.2020

**Hon'ble Shri Ashish Kalia, Member (J)
Hon'ble Mr. B. V. Sudhakar, Member (A)**

B. Radhakumari
W/o Sri N M V Prasad
Aged about 56 years
Occ: U D C (Engineering Division)
Geological Survey of India,
Southern Region
Bandlaguda, Hyderabad.

.... Applicant(s)

(By Advocate: Mr. K. Phaniraju)

Vs.

1. The Union of India rep. by the Secretary
Ministry of Mines, Dept. of Mines, Shashtribhavan
New Delhi – 110 001.
2. The Director General
Geological Survey of India (CHQ)
27, J.N.Nehru Road
Kolkata – 700 016.
3. The Deputy Director General
Geological Survey of India
Southern Region, Bandlaguda
Hyderabad – 500068.

... Respondent(s)

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

ORDER

By Shri B.V.Sudhakar, Member (A):

2. The OA has been filed aggrieved by the inaction of the respondents in not granting the 2nd Financial Upgradation under ACP Scheme in the Grade Pay of Rs.4200 and 3rd Financial Upgradation under MACP Scheme in the Grade Pay of Rs.4600/-.

3. Brief facts of the case are that the applicant was initially appointed as LDC on 22.08.1981 on ad hoc basis in the respondents organization. Her services were regularized in 1987. Thereafter, she was promoted as UDC 1999 with the Grade Pay of Rs.2400/-. The applicant claims that she has completed more than 30 years of service from the date of joining in the respondents organization and that she got only one promotion as UDC in the year 1999. As per ACP Scheme, applicant is entitled for 2nd financial upgradation, on completion of 12 and 24 years of service respectively, in the year 1993 and 2005. Further, on her getting one promotion, applicant claims that she is at least entitled for 2nd ACP in the next higher grade of Assistant with Grade Pay of Rs.4200. Besides with the introduction of MACP Scheme, applicant asserts that since she has completed 30 years of service, she is entitled for the Grade Pay of Rs.4600 in the Superintendent grade. As the respondents, vide Office Order dated 13/16.09.2013, granted 2nd ACP

with Grade Pay of Rs.4200 w.e.f. 22.08.2005 and the 3rd MACP with Grade Pay of Rs.4600 w.e.f. 21.08.2011 on completion of 24 years under ACP and 30 years under MACP. Albeit, the order was issued in September, 2013, the said benefits were not extended to the applicant till date. Applicant represented for release of the said benefits but there has been no response. Hence, the OA.

4. The contentions of the applicant are that she has completed 32 years of service, hence, she is entitled for the benefits under ACP and MACP Schemes. The applicant was initially appointed on ad hoc basis but later it was regularized without any break in service. Hence, the applicant is eligible for the benefits, which could be extended by counting the ad hoc service and also keeping in view the Judgement delivered by the Principal Bench in the case of **Satish Kumar v. Secretary, Ministry of Health & Family Welfare & Others** [OA No.3184/2010, decided on 27.01.2012].

5. Respondents opposed the contentions of the applicant by submitting that the applicant has not completed the requisite number of years of service to be granted under the MACP benefits sought for. The services, rendered by the applicant on ad hoc basis from 1981 to 1987, were not regularized. The Office Order dated 13/16.09.2013, granting MACP was erroneously issued violating the rules on the

subject, and hence it was cancelled on 15.09.2014. The applicant has been sanctioned the 2nd financial upgradation under MACP on 22.08.2009 with a grade pay of Rs.2800. Applicant thereafter has been promoted in the grade pay of Rs.4200 on 10.06.2014. The regularization of the services of the applicant on ad hoc basis was latter found to be defective as per the extract of the file noting of the Dy. Director General (P), at page 12, in File No.A11014/1/MACP/2013/PMB. The MACP is granted only for the regular service rendered by the employee, hence, ad hoc service could not be taken for the purpose of granting the MACP benefits sought for by the applicant. Based on the above, the request for grant of ACP/MACP as requested by the applicant is rejected. Lastly, the respondents have raised the preliminary objection of misjoinder and non-joinder of necessary parties.

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

7. (I) It is an undisputed fact that the respondents have appointed the applicant on ad hoc basis in 1981 and latter her services were regularized in 1987. The respondents have admitted that they made a mistake in regularizing the ad hoc service, and the same was dealt and rectified vide Office Note referred to hereinbefore. Under the law, it is permitted to rectify a mistake so that there would be uniformity and fairness in decision making. The Hon'ble Supreme Court in State of

Karnataka v. Gadilingappa, (2010) 2 SCC 728, at page 730, observed as under:

“It is a well-settled principle of law that even if a wrong is committed in an earlier case, the same cannot be allowed to be perpetuated.”

The Hon’ble Supreme Court in **Basawaraj and another v. Special Land Acquisition Officer**, (2013) 14 SCC 81, while saying that *a mistake should not be forced to be perpetuated*, it was held thus:

“8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated.”

In the instance case, the applicant claiming that her services rendered was regular, would not be in consonance with the aforesaid Judgement.

(II) Now, coming to the rules governing the MACP Scheme, as per DoPT Memo dated 19.05.2009, only regular service is counted for granting MACP benefits. The relevant para 3 and Condition No.9 thereto are extracted hereunder:

“3. The Scheme shall continue to be applicable to all regularly appointed Group "A"(except officers of the Organised Group "A" Services), "B", and "C" Central Government Civilian Employees. Casual employees, including those granted 'temporary status' and employees appointed in the Government 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-I.”

Condition:

“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 casual, adhoc/contract basis before regular appointment on pre-appointment training shall not be taken into reckoning. However, past continuous regular service in same/another Central Government Department in a post carrying same pay level in the Pay Matrix 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, benefits under the MACPS in such cases shall not be considered till the satisfactory completion of the probation period in the new post.”

(III) Besides, the applicant has cited the case of **Shri Satish Kumar** (supra), which was decided by the Hon’ble Principal Bench. In the said judgement it was held that the ad hoc service rendered by the applicant therein for granting benefits under the ACP Scheme could be considered for grant of financial upgradation.

(IV) However, it needs to be emphasized at this juncture that the Hon’ble Apex Court has emphasized the inevitable necessity of following the rules. The relevant portion of the Judgements delivered by the Hon’ble Supreme Court in regard to the aspect of abiding by the rules are extracted hereunder:

(a) The Hon'ble Supreme Court in **T.Kannan and ors vs S.K. Nayyar, (1991) 1 SCC 544** held that "*Action in respect of matters covered by rules should be regulated by rules*".

(b) Again in **A.N.Sehgal & Others v. Raja Ram Sheoran & Others, 1992 Supp (1) SCC 304**, the Hon'ble Supreme Court has stated that "*Any wanton or deliberate deviation in the implementation of the rules should be curbed and snubbed.*"

(c) In another judgment reported in (2007) 7 SCJ 353, the Hon'ble Apex court held that "*the court cannot de-hors rules*"

The respondents have only followed the MACP rules and decided the issue, which is in consonance with the aforesaid observation of the Hon'ble Apex Court. The rules are very clear and there is no ambiguity/vagueness.

The aforesaid observations of the Hon'ble Apex Court were not discussed in the Judgement, passed in OA 3184/2010, rendered by the Hon'ble Principal Bench while coming to the conclusion that the ad hoc services can be considered for granting MACP benefits.

(V) Moreover, in a recent Judgement of Hon'ble Principal Bench of this Tribunal in OA No.562/2013 (**Mrs. Neelam Gambhir & Others v. Union of India & Others**), decided on 07.02.2019, wherein a similar

question, pertaining to counting of ad hoc service for the purpose of grant of financial upgradation under MACP, has been considered, and observed as under:

“5. In the O.A. itself, the applicants have furnished the particulars of the dates on which they have been appointed on ad hoc basis, and those on which they have been regularized. In some cases, the ad hoc service is about eight years and in other cases, it is about sixteen years. The question as to whether the ad hoc service can be counted for the purpose of extension of ACP/MACP Scheme benefits, is not left in the grey area. The O.M. dated 19.05.2009 is very clear in this behalf. In paragraph 3 of the O.M., it is mentioned as under:-

“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-1.”

6. Further, the expression “regular service” was explained in paragraph 9 of the O.M. There again, it was clearly stated that except the regular service, the ad hoc service does not count at all. When the purport of O.M. is very clear and unambiguous, the applicants cannot claim any benefit contrary to the same. Further, the O.M. is not under challenge. As long as the O.M. remains in its present form, the question of counting ad hoc, contractual or temporary service, for the purpose of extending the benefits of ACP/MACP, does not arise.

7. We do not find any merit in this O.A. It is accordingly dismissed. There shall be no order as to costs.”

(VI) Thus by applying the relevant rules and the latest Judgement of the Hon’ble Principal Bench in OA 562/2013, the ad hoc service rendered by the applicant has to be discounted for granting financial upgradation sought and then examine her case as expounded below:

The applicant was regularized in the LDC cadre in the year 1987. In 1999, she was promoted to the UDC cadre. As she got a promotion to UDC cadre, she was not eligible to be granted 1st financial upgradation under ACP Scheme. Thereafter, she was granted the 2nd financial upgradation under MACP w.e.f. 22.08.2009 in the Grade Pay of Rs.2800 since she was not promoted in the said period. However, the grant of 2nd MACP was given w.e.f. 22.08.2009 instead of 22.08.2007 because, by that date, she completes 20 years of service. Later, on 10.06.2014, the applicant was promoted to the post of Assistant in the Grade Pay of Rs.4200, therefore, she is not eligible for grant of 3rd MACP.

(VII) Thus, as can be seen from the above, the applicant was eligible for the 2nd financial upgradation under MACP Scheme in the grade pay of Rs.4200/- from 22.08.2007, since MACP Scheme was implemented w.e.f. 01.01.2006. In this regard we take support of Hon'ble Supreme Court Judgement Union of India v. Balbir Singh Turn, (2018) 11 SCC 99, wherein it was observed as under:

“6. 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 1-1-2006. The second part of the clause lays down that all allowances except the dearness allowance/relief will be effective from 1-9-2008. The AFT

held [Balbir Singh v. Union of India, 2014 SCC OnLine AFT 1128] , 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.”

(VIII) In view of the above, the benefit of 2nd financial upgradation under MACP is liable to be given to the applicant from 22.08.2007.

(IX) In view of the aforesaid circumstances, the OA is partly allowed by directing the respondents to grant the 2nd MACP from 22.8.2007 and the consequential benefits thereon, which flow by pre-poning the grant of 2nd MACP from 22.08.2009 to 22.08.2007.

(X) With the above directions, the OA is partly allowed with no order as to costs.

(B. V. Sudhakar)
Member (A)

(Ashish Kalia)
Member (J)

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