

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/212/2018

HYDERABAD, this the 19th day of March, 2021



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

Abdul Subhan, Group. 'C'
S/o. Saikh Madina,
Aged about 58 years,
Occ: Ty. Status, R/o. D.No.38,
Marripalem, Masjid Vedhi,
Visakhapatnam – 530 018.

...Applicant

(By Advocate: Smt. Anita Swain)

Vs.

1. The Union of India rep. by its
Secretary Ministry of Defence,
South Block, New Delhi – 110 011.
2. The Chief of Naval Staff,
Naval Head Quarters, North Block,
New Delhi – 110 011.
3. The Flag Officer Commanding-in-Chief,
Eastern Naval Command,
Visakhapatnam.
4. Base Victualling Officer,
Base Victualling Yard,
Naval Base, Visakhapatnam – 530 009.

... Respondents

(By Advocate: Sri A. Surender Reddy, Addl. CGSC)

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

2. The OA is filed with a prayer to direct the respondents to grant two financial upgradations under ACP and MACP scheme by counting the casual service from the date of initial appointment i.e. 01.02.1992.



3. Brief facts of the case are that the applicant joined the respondents organization as casual labour in 1992, granted temporary status in 1998 and on the intervention of the Tribunal in OA 742/2016 his services were regularized w.e.f. 1. 11.2013. Applicant got issued a legal notice on 12.1.2018 for ACP/MACP benefits and since there was no reply, the OA is filed.

4. The contentions of the applicant are that he is eligible for 1st ACP in 2004 and 2nd MACP in 2012. MOD vide letter CP(SC)/4384/Court Cases/NHQ/1375/D(N-II) directed the Naval Establishments to extend the benefits as ordered in OAs decided by Hon'ble Bombay/Madras Benches of this Tribunal to similarly placed non petitioners working in Group C & D cadre. This Tribunal has also decided similar issues in many OAs to extend financial up-gradation by counting the service from the date of the initial appointment. Details of non petitioners has been obtained on 4.7.2016 by the R-2 and forwarded to R-3, who has not taken any action. Juniors to the applicants and similarly placed employees were granted the benefit, but not to him. Similarly placed employees have to be granted the similar benefit as observed by the Hon'ble Apex Court in Inderpal Yadav v U.O.I and K.C. Sharma v. UOI. By not extending the benefit sought, respondents have violated Articles 14 & 21 of the Constitution.

5. Respondents while confirming the career details of the applicant have stated that for grant of financial up-gradations under career progression schemes, the regular service is considered vide DOPT memos dated 9.8.1999/19.5.2009. Applicant's services were regularized in 2013 and hence, he is not eligible. In regard to the judgments of the Tribunal and the Hon'ble High Court of A.P., respondents state that the applicant cannot compare himself with others in the various OAs.



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

7. I. The dispute is about granting the financial upgradation to the applicant by counting the service of the applicant from the date of initial appointment as casual labour. Respondents denied the benefit by affirming that the services of the applicant were regularised in 2013 and hence, he is not eligible. Applicant cited the judgment of the Tribunal in OA 1398/2012 (Annexure A-5) to support his contention, the relevant portion of the same is extracted here under:

“9. For the foregoing reasons and discussions made above and in view of the judgment/ order in OA 755/2000, we direct the respondents to regularize the services of the applicant for the purpose of financial upgradation from the date of initial appointment and further direct the respondents to grant the financial upgradation under MACP Scheme on completion of 10, 20 years of service from the date of initial appointment as Casual Labourer on par with other similarly situated persons with all consequential benefits within a period of three (3) months from the date of receipt of copy of this order.”

II. Further, the applicant has relied on the judgment of the Hon'ble High Court of Andhra Pradesh in WP Nos.24314 and 24944 of 2008 (Annexure A-6) wherein the issue of grant of financial under ACP

from the date of initial appointment was dealt. The relevant portion of the judgment is extracted hereunder:

“It is necessary to take note of condition No. 4 and para 3.2 of the ACP Scheme, which reads as under:

Condition No. 4



“The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second financial upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfillment of prescribed conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings etc., this would have consequential effect on the second upgradation which would also get deferred accordingly.”

3.2 Regular service for the purpose of the ACP Scheme shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant Recruitment/ Service Rules.

From a reading of the aforesaid paragraphs, it is clear that the regular service, as defined in para 3.2 of the scheme, is to be counted for the purpose of extension of ACP benefits. The petitioner-organization cannot take the plea that because of administrative convenience they had used the word ‘regular’ in order of regularization and such orders are to be passed as per the rule/ instruction and are to be read as they are worded. Therefore, as per the definition of regular service in para 3.2 of the scheme, the services rendered by the respondents cannot be denied by the petitioner-organization for the purpose of granting the benefit of ACP scheme. Hence, it cannot be said that the Tribunal was not justified in directing the petitioner-organization to count the services rendered by the respondents from April, 1979 for the purpose of granting 2nd ACP benefit, and directing to place the respondents in the pay scale of Rs.5000-150-8000. Thus, we do not find any illegality or infirmity in the order of the Tribunal.

Both the writ petitions are accordingly dismissed. No order as to costs.”

III. Respondents have not come clear on the order of MOD cited by the applicant issued in compliance with the orders of the Hon’ble Bombay/ Chennai Benches of this Tribunal to grant benefit of financial upgradation to the non petitioners as well. The applicant has cited the judgment of the Hon’ble Supreme Court in Inderpal Yadav, to claim that since he is similarly situated like the petitioners/ applicant in the WPs/ OA cited supra, the benefit sought has to be extended. However, respondents replied stating that applicant cannot compare himself with the

petitioners/applicant in the WPs/OA cited, but did not give reasons as to why such a comparison should not be made. If the applicant was not similarly situated, it should have been elucidated in the reply statement. As it was not done, we remit the matter to the respondents for examining the issue in the context of the rules and the judgments relied upon by the applicant as at above and take a decision within a period of 3 months from the date of receipt of this order.



With the above direction the OA is disposed of with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/