

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.420/12

Thursday this the 1st day of August 2013

C O R A M :

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Narayana Pillai V,
S/o.Vasudevan Pillai,
Upper Division Clerk,
Headquarters Southern Naval Command,
Office of the Chief Staff Officer,
Southern Naval Command,
Naval Base, Cochin – 682 004.
Permanent Address : Puthiyavila,
Pattoli Market PO, Alleppey – 690 531.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

V e r s u s

1. Union of India represented by the Secretary
to the Government of India, Ministry of Defence,
New Delhi.
2. Officer-in-Charge,
Records the Granadiers,
Ministry of Defence, Jabalpur,
Madhya Pradesh – 648 201.
3. The Flag Officer Commanding-in-Chief,
Southern Naval Command,
Naval Base, Cochin – 682 004. ...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)

This application having been heard on 1st August 2013 this Tribunal
on the same day delivered the following :-

O R D E R

BY HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant joined the services as LDC (in lieu of combatant) on
08-12-1983 under Records the Mahar Regiment, Saugor, Madhya Pradesh
and was thereafter transferred on account of surplus and posted as LDC



Clerk w.e.f. 16-12-1985 in the Records the Grenadiers, Jabalpur. On the introduction of financial up gradation under the ACP Scheme which came into effect from 09-08-1999, the applicant was afforded the same w.e.f. 09-08-1999 and later on he was promoted as UDC in the very same office w.e.f. in the year 2004. On completion of 24 years reckoned from 08-12-1983, i.e. the date of initial appointment (i.e. from 08-12-2007), according to the applicant, he was entitled to the grant of the second financial up gradation. This was, however, not been granted. The applicant was transferred on request to the Southern Naval Command on 05-03-2008 and it was thereafter that the erstwhile ACP scheme was replaced by MACP Scheme, effective from 01-09-2008. The applicant submitted his representation for grant of the second financial up gradation, vide Annexure A-2 and the third respondent, in fact, passed orders for the grant of both the first and second ACP as on 05-03-2008, vide Annexure A-4. However, the said order was rescinded by the impugned Annexure A-1 order on the ground that the date of regular appointment of the applicant reckoned from the date he was appointed as LDC and the period spent prior to the same i.e. as LDC (in lieu of Combatant) is to be treated only as ad-hoc or temporary and consequently, the applicant did not complete 24 years prior to 15-12-2009 by which time, the ACP had been superseded by MACP. According to the applicant, the services rendered as LDC (in lieu of Combatant) had been held as one of regular service in certain decisions of the Madras Bench and the Delhi Bench of the Tribunal. The decision of the Madras Bench had been upheld by the High Court and the SLP filed against the judgment of the High Court was dismissed by the Apex court. Hence this OA seeking the following reliefs :-

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- "1. Call for the records leading to Annexure A-1 and quash the same.
2. Declare that the refusal on the part of the respondents to grant the applicant the benefit of the financial up-gradations under the ACP scheme with effect from 08.12.2007, the date from which the financial up-gradation fell due, is totally arbitrary, discriminatory, contrary to law and hence, unconstitutional.
3. Direct the respondents to reckon the service rendered by the applicant as Lower Division Clerk (in lieu of Combatant) from 08 December, 1983 to 07 December, 1985 as regular service to be counted as eligible service for grant of financial up-gradation under the ACP Scheme, and direct further to grant the applicant, the benefit of the 2nd financial up-gradations under the ACP Scheme with effect from 08.12.2007, with all consequential arrears of pay and allowances arising therefrom.
4. Award costs of and incidental to this application.
5. Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."
2. Respondents have not disputed the facts as mentioned above, but contended that the period spent as LDC in lieu of combatant has to be treated only as ad hoc in which event, after one financial up gradation under the ACP Scheme, the applicant was not eligible for the second financial up gradation, as by the time he completed 24 years of service, the said ACP Scheme was substituted by MACP Scheme. The respondents have also relied upon a decision by the Bombay Bench of the Tribunal, which, while interpreting the provisions of the ACP Scheme has held that services that could be taken into account for working out the requisite period of 12/24 years would not include ad hoc services. The second respondent also contested the OA with the very same contention which is in tune with that of the third respondent.
3. Counsel for the applicant has submitted that the service rendered as

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LDC in lieu of combatant cannot but be treated as regular. In this regard he had relied upon the decision of the Madras Bench of the CAT in the case of Skariah Thomas vs Union of India in OA No. 85 of 2006, wherein the identical situation arose and the Tribunal, relying upon the decision of the Apex Court in the case of Union of India vs M.Mathivanan (2006) 6 SCC 57 (wherein the question was to treat the period spent while being in Reserve Training Pool (RTP) even prior to regular appointment in the Department of Posts) held that the applicant's case is supported by the aforesaid decision of the Apex Court and allowed the OA. This was challenged in Writ Petition No. 5876 of 2008 which was, however, dismissed upholding the decision of the Tribunal. SLP filed by the respondents vide CC No. 7223 of 2009 was dismissed vide order dated 08-07-2009. Again, the Principal Bench had considered the same issue in OA No. 3409/2011 and by order dated 01-02-2012 allowed the said OA. Further, vide Annexure A-8 communication issued by the Defence Security Corps Records, addressed to the Naval Aeronautical Quality Assurance Service, Naval Base, Cochin, wherein also, the period of service as LDC in lieu of combatant was considered as one of regular in character.

4. Counsel for the respondents has relied upon the decision in OA No. 526 of 2009 of the Bombay Bench, vide Annexure R-9 order dated 10th August, 2011.

5. Arguments were heard and documents perused. Two good grounds are available in favour of the applicant :-

(a) Admittedly, the applicant on being rendered surplus was absorbed in Record the GRENADIERS, Jabalpur. Para 4(b) of

the OA and reply to the said para, vide para 4 of the reply refer. This is obviously under the provisions of the **Central Civil Services (Redeployment of Surplus Staff) Rules, 1990**. As per the provisions of section 2(d) said Rules, the term **surplus staff and surplus employee or employees** has been defined in section 2(d) of the said Rules and the same reads as under :-

(g) 'Surplus staff and' surplus employee or employees' means the Central Civil Servants (other than those employed on ad hoc, casual, work-charged or contract basis) who-

(a) are permanent or, if temporary, have rendered not less than five years' regular continuous service; and

(b) have been rendered surplus along with their posts from the Ministries, Departments, Offices of the Government of India, as a result of -

(1) Administrative and financial reforms including inter-alia, restructuring of an organization, zero base budgeting, transfer of an activity to a State Government, Public Sector Undertaking or other autonomous organization, discontinuation of an on-going activity, and introduction of changes in technology; or

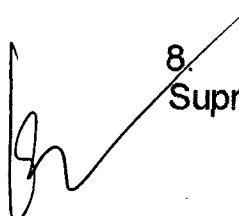
(2) Studies of work measurement undertaken by the Staff Inspection Unit of the Ministry of Finance or any other body set up by the Central Government or the Ministry/Department concerned; or

(3) Abolition or winding up either in whole or in part of an organization of the Central Government;

In the instant case, the service rendered by the applicant as LDC (in lieu of Combatant) was only for a period of two years. As such, his redeployment was on the basis of his having been treated as a permanent employee as per the above definition. In view of the above, the character of the service of the applicant as LDC (in lieu of combatant) cannot but be held as regular.

(b) The precedents relied upon by the applicant vide Annexure A-5 and A-9 fully support the case of the applicant.

In Annexure A-5, the Madras Bench of the Tribunal has held as under :-

 8. The learned counsel also relied on the Hon'ble Supreme Court Judgment in Union of India and others vs

M. Mathivanan (2006) 6 SCC 57 where their Lordships held that the respondent employee having completed the eligible condition of 16 years of service which included non regular as well as regular service, he would be entitled to the benefit of time bound promotion. Para 13 of the said order reads as under :-

13. *Reading of the above two paragraphs makes it abundantly clear that so far as placing of an officer in the "next higher grade" is concerned, what is relevant and material is that such official belonging to basic grades in Groups 'C' and 'D' must have completed "sixteen years of service in that grade". The said paragraph nowhere uses the connotation "regular" service. Para 2 which provides for the Departmental Promotion Committee and consideration of cases of officials for "promotion", provides for sixteen years of "regular" service. The Tribunal, therefore, rightly considered para 1 as relevant and held that basic eligibility condition for being placed in the next higher grade is that the officer must have completed sixteen years of service in the basic grade in Group 'C' and Group 'D'. Though in other paragraphs, the service was qualified by the adjective "regular", the said qualification was not necessary for the purpose of para 1. Since the employee wanted the benefit of placement in "next higher grade", what was required to be established by him was that he had completed sixteen years of service in the grade and the said requirement had been complied with in view of the fact that with effect from 30-9-1983 he was appointed as Warrant Officer. He was, therefore, entitled to the benefit of "next higher grade" under para 1 from 1999. The authorities were, therefore, not justified in rejecting the claim and accordingly the petition was allowed. The High Court rightly upheld the direction of CAT.*

9. *Even though the applicant's reliance on this does not meet with the facts of the instant matter where regular service is the stipulation for consideration for ACP Scheme, we agree that the applicant's case is supported to the extent that Hon'ble Apex Court had considered the service rendered while being in Reserve Training Pool (RTP) without being given regular appointment in Department of Posts, the services so rendered even as RTP could be counted for TBOP Scheme eligible after 16 years of service. Applying the ratio of the orders cited supra and also keeping in view the fact that the respondents have nowhere given any reason for excluding the service rendered by the applicant as LDC (in lieu of Combatant) and the applicant having claimed that the service he had rendered between 28-5-1987 and 28-05-1989 would count for all purposes, including Pension, which has not been countered by the*

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respondents, we are convinced that the respondents are taking an arbitrary stand in disqualifying the service rendered by the applicant as LDC(in lieu of combatant) and hence the applicant has made out a convincing case for the relief sought for. We therefore, direct the respondents to take into account the service rendered by the applicant from 28-05-1987 and 28-05-1989 as regular service and as he is eligible for the first ACP w.e.f. 9-8-1999, to issue necessary orders to that effect within a period of eight weeks to issue necessary orders to that effect within a period of eight weeks from the date of receipt of a copy of this order.

The above order was challenged before the High Court of Judicature at Madras in WP No. 5876 of 2008 and the High Court has upheld the above order stating as under :-

"12. Even though such clarification issued by the Department prima facie supports the case of the present petition, we do not think that such clarification at all can be given effect to in view of the categorical decision of the Supreme Court, under similar circumstances, which has opined that the period of service rendered as ad hoc service is also to be counted for the purpose of considering grant of benefit of ACP Scheme. In view of the said decision, we do not find any merit in this writ petition. Accordingly, the writ petition is dismissed. The order of the Central Administrative Tribunal shall be complied with within 60 days from the date of receipt of this order."

Undaunted by the dismissal of the WP, the respondents had approached the Apex Court by way of SLP, but the same had been dismissed at the very threshold level, vide order dated 08-07-2009 at Annexure A-7.

Vide Annexure A-9, the Principal Bench of the Tribunal in its order dated 01-02-2012 in OA No. 3409 of 2011 has held as under :-

"4. We have heard the learned counsel for the parties. Undisputedly, the applicants are similarly placed as the applicants in O.A. 2089/2008 (supra). The issue decided in the aforesaid O.A is that the service rendered by the applicants therein as civilian clerks in lieu of combatant clerks shall be counted for the purpose of granting ACP/MACP benefits. We do not understand the logic of either the Ministry of Defence, DOP&T, Ministry of Finance or even the Ministry of Law, as to how the aforesaid directions, as upheld by the Hon'ble High Court of Delhi and the Apex Court, cannot be made applicable to the applicants who are admittedly similarly placed. In our

considered opinion, the respondents/departments should desist from rejecting the genuine request of the employees and force them to knock the door of the courts unnecessarily without any justifiable ground. In the circumstances, we allow this O.A. Consequently, the impugned order dated 08.09.2011 is quashed and set aside. The respondents shall treat the applicants in this O.A similarly placed as the applicants in O.A 2089/2008 (supra) and the directions given therein, as extracted above, shall be made applicable to the applicants herein also. The respondents shall grant all the consequential benefits to the applicants herein within a period of two months from the date of receipt of a copy of this order. Even though this is a fit case for imposing exemplary costs on the respondents, we desist from doing so as the applicants would be monetarily benefited by the orders of this Tribunal. There shall be no order as to costs."

6. As against the above, the respondents have relied upon the decision by the Bombay Bench of the Tribunal in OA No. 526 of 2009. That was a case where the question was whether ad hoc service would count for ACP and the answer was in negative. In the instant case, the service rendered by the applicant while functioning as LDC(in lieu of Combatant) has been held by the other two Benches as Regular and in addition, as stated earlier, the applicant was rendered surplus and was adjusted in another Unit which would not have been possible had the applicant's services been ad hoc or temporary. Thus, the decision relied upon by the respondents is not applicable to the facts of this case.

7. In the case of **Sant Lal Gupta v. Modern Coop. Group Housing Society Ltd., (2010) 13 SCC 336**, the Apex Court has emphasized the need to follow the rule of precedent stating as under :-

"The rule of precedent is binding for the reason that there is a desire to secure uniformity and certainty in law. Thus, in



judicial administration precedents which enunciate the rules of law form the foundation of the administration of justice under our system. Therefore, it has always been insisted that the decision of a coordinate Bench must be followed. (Vide *Tribhovandas Purushottamdas Thakkar v. Ratilal Motilal Patel, Sub-Committee of Judicial Accountability v. Union of India and State of Tripura v. Tripura Bar Assn.*)"

8. Keeping in mind the above law laid down by the Apex court, if the case is viewed, on account of the existence of at least two binding precedents with identical facts as in the instant case, this OA deserves to be allowed. In addition, the fact that the applicant has been redeployed reflects that his earlier services as LDC (in lieu of Combatant) as per the Central Civil Services (Redeployment of Surplus Staff) Rules, 1990 was regular in character.

9. In view of the above, the OA is allowed. The impugned order at Annexure A-1 is quashed and set aside. It is declared that the applicant is entitled to the benefit of Second financial up gradation under the ACP Scheme w.e.f. 08-12-2007 subject however, to the fulfillment of conditions contained in the Scheme. Respondent No. 2 is therefore, directed to consider the case of the applicant for grant of 2nd ACP and make available the benefit of the same by working out his pay and allowance admissible to him and pay the difference in pay and allowance. If the last pay drawn by the applicant in the office of respondent No. 2 has any bearing in the applicant's fixation of pay on his joining the office of the third respondent on request transfer, then the respondent No. 3 shall revise his pay on the basis of the pay fixed by the second respondent after affording the financial benefit (subject to fulfillment of the conditions attached to the Scheme). Time calendared for full compliance of this order

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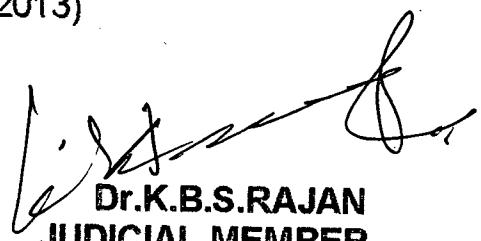
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is (a) three months for the second respondent to comply with the order with reference to his part as directed and (b) two months thereafter by the second respondent.

10. No cost.

(Dated this the 1st day of August 2013)


K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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