

Central Administrative Tribunal
Ernakulam Bench

OA No.521/2012

Friday this the 12th day of February, 2016

CORAM

Hon'ble Mr.Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs.P.Gopinath, Administrative Member

K.Ahammed
S/o Kasmi Puttilam
Helper for Lineman
O/o Assistant Engineer (Electrical)
Electrical Sub Division,
Union Territory of Lakshadweep
Amini Island, UT of Lakshadweep-682 552.

Applicant

(By Advocate: Mr.N.Unnikrishnan)

Versus

1. Union of India represented by
the Secretary to the Government
Ministry of Personnel & Public Grievances
Department of Personnel & Training
New Delhi-110 001.
2. The Administrator
UT of Lakshadweep
Kavaratti-682 555.
3. The Executive Engineer
Electricity Department
UT of Lakshadweep
Kavaratti-682 555
4. The Assistant Engineer (Electrical)
Electrical Sub Division
Union Territory of Lakshadweep,
Anthroth Island-682 551.

Respondents

(By advocates: Mr.Sinu G.Nath (R1)
Mr.S.Radhakrishnan (R2-4).

The OA having been finally heard on 13.1.16 this Tribunal delivered the following order on 12.1.16.



ORDER

By P.Gopinath, Administrative Member

In this OA, applicant seeks a declaration that he is entitled to get first financial upgradation under the ACP Scheme with effect from 2001 and second financial upgradation under the MACP Scheme with effect from 2011 with all consequential benefits.

To narrate the facts in a nutshell, the applicant, presently Helper for Lineman, joined the Lakshadweep Administration as NMR Labourer in 1983. In January 1989, he was appointed as Work Charged Wireman in pay scale Rs.950-1500/-. According to applicant, he was compelled to join duty as Oilman in pay scale Rs.750-940 in September 1994. As Wireman, the applicant was drawing pay of Rs.1030/-, but as Oilman, his pay was fixed at Rs.940/- thus entailing a loss of Rs.90/-. Annexure A3 refers to the pay fixation order wherein it is stated that the loss in emoluments (Rs.90) would be protected provisionally by granting personal pay subject to clarification from Ministry of Home Affairs. By Annexure A4, applicant was promoted as Helper for Lineman in pay scale Rs.2610-4000. According to the applicant, his pay in the promoted post was fixed without giving him the 2nd stagnation increment in the post of Oilman due on 1.1.2003. Annexure A7 representation submitted by the applicant elicited no response. It is stated that the administration is bound to count the service rendered on work charged establishment and as such the ACP Scheme is applicable to such appointee. The applicant was appointed after a regular selection in 1989. Therefore, he was eligible for first ACP on



completion of 12 years in 2001. Similarly as the higher post of Engine Driver to which the applicant was temporarily promoted by Annexure A4 dated 30th October, 2002, was merged with the post of HLM (Helper for Lineman), the applicant contends that he is entitled to 2nd financial up-gradation under MACP with effect from 2011. Alleging hostile discrimination on the ground that similarly situated persons on work charged establishment were granted ACP/MACP benefits, whereas the said benefit was denied to him, the applicant has filed the present OA.

2. The respondents in their reply statement have denied that the applicant was compelled to work as Oilman. The applicant was initially appointed as work charged Wireman in the scale Rs.950-1500/-. He was appointed as Oilman on regular basis on 11.5.1994. His pay in the post was fixed at the maximum at Rs.940/- in the scale of Rs.750-940 in terms of clarification from the Government of India. In the combined seniority list of Oilman issued on 15.2.2002, the applicant's name was at Sl.No.143. The decrease in emoluments was protected by way of granting personal pay, subject to clarifications from the Ministry. On receipt of the clarifications, his pay was fixed in the scale Rs.750-940. The applicant was promoted and posted in the vacancy of Helper for Lineman in the grade of Engine Driver cum Mechanic on ad-hoc basis as per Annexure A4. The period of work charged service as Wireman under work charged establishment cannot be counted as regular service because work charged service is not followed by absorption in regular establishment in view of reply to point of doubt Nos.4-6 in DoPT OM No.35034/1/97-Estt(D) (Vol.IV) dated 10.2.2000 and also reply to doubt No.43 in OM No.35034/1/97-



Estt (D) (Vol.IV) dated 18.7.2011. Since the applicant entered service as Oilman only on 11.5.1994, he will be eligible for 2nd financial upgradation on completion of 24 years of regular service from 11.5.1994. The benefit of ACP had been extended to other employees as they continued in the WC establishment, which is not the case of the applicant who joined as Oilman while working in the WC establishment. Regular service is counted from the date of regular appointment. The applicant's regular appointment was as Oilman on 11.5.1994. Respondents further contend that as per CAT order in OA No.375 of 2009, the service rendered in the work charged establishment cannot be counted for the purpose of 2nd financial up-gradation under ACP Scheme. The OA is devoid of merit and deserves to be dismissed, contend the respondents.

3. Heard the learned counsel for the applicant and the respondents and perused the written submissions made. Basic question in this OA is whether service rendered by applicant as work charged staff is to be counted as regular service. Annexure A1 is the order issued engaging applicant as work charged wireman. The last paragraph of the said document clearly states that the appointees are informed that their appointment is ordered purely on temporary basis and will not confer on them any claim for permanent appointment in the grade. It also states that their service will be terminated at any time without assigning any reasons. Applicant was appointed in scale of pay of Rs.950-1500 and he opted for appointment in lower scale Rs.750-940 as he wanted to get out of being a work charged staff.

4. On his appointment as Oilman, he requested for protection of his pay




drawn as WC Wireman. He was informed that this would be subject to clarification from Ministry of Home Affairs. Hence the applicant was clearly informed of the condition of protection. Respondents draw the attention of the Bench to *Punjab SEB Vs. Jagjivan Ram (2009) 3 SCC 661* wherein it was held that regular service means service rendered after regular appointment and does not include service rendered as temporary, ad hoc or work-charged employee. Respondents in the Civil Appeal were not granted benefit of time bound promotional scheme/increment unless they completed prescribed length of service as regular employees. The Court also held that the mere fact that in another case benefit had been given to some employees in compliance with a court order would not influence the interpretation of relevant provisions of the scheme for time bound promotion according to settled law on the subject. The Court held that:

"9. Generally speaking, a work-charged establishment is an establishment of which the expenses are chargeable to works. The pay and allowances of the employees who are engaged on a work charged establishment are usually shown under a specified sub-head of the estimated cost of works. The work charged employees are engaged for execution of a specified work or project and their engagement comes to an end on completion of the work or project. The source and mode of engagement/recruitment of work charged employees, their pay and conditions of employment are altogether different from persons appointed in the regular establishment against sanctioned posts after following the procedure prescribed under the relevant Act or rules and their duties and responsibilities are also substantially different from those of regular employees."

The court went on to add:

"10.They can neither claim regularization of service as of right nor can they claim pay scales and other financial benefits on a par with regular employees service in the work charged establishment cannot be clubbed with service in a regular establishment unless a specific provision to that effect is made either in the relevant statute on the scheme of regularization".



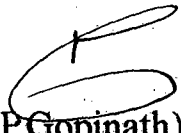
5. In *Jaswant Singh Vs. UOI (1979) 4 SCC 440* it was held that work charged employees are not entitled to service benefits available to regular employees. In *State of Rajasthan Vs. Kunji Raman (1997) 2 SCC 517* also the Court considered whether principle of equal pay for equal work can be invoked for granting parity to work charged employees with regular employees. The Apex Court held that a regular establishment and a work charged establishment are two separate types of establishments and the persons employed on these establishments form two separate and distinct classes. If general rules applicable to persons working on the regular establishment are not made applicable to work charged employees, the Apex Court held that it cannot be said that they are treated in an arbitrary and discriminatory manner by the Government. It is well settled that the government has the power to frame different rules for different classes of employees.

6. The respondents also drew our attention to OA 375 of 2009 wherein it was held that "Regular service for the purpose of ACP Scheme shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant recruitment/service rules."

7. In the case of applicant, regular service commenced as Oilman on 11.5.1994. Service prior to that was as work charged establishment. Others in the respondent organization have also been treated similar to the applicant. Hence it is not as if the applicant has been discriminated or denied benefits given to similarly placed persons. It is denied by the respondents that they compelled the applicant to shift from work charged Wireman to Oilman. If the applicant had been appointed against his wishes, he had a chance to protest



when the combined seniority list of Oilman/Mazdoor was issued on 15.2.2002, ten years before filing this OA, wherein applicants name was at Sl.No.143. The applicant also did not register a protest when the respondents vide Annexure R2 (b) dated 9.11.95 clarified that re-fixation of pay of Oilman who were appointed from work charged establishment would be fixed at the maximum of the pay scale of the regular post i.e., Rs.750-940 and not as per work charged scale of Rs.950-1500. He had another chance when the excess drawn personal pay and allowance were recovered in monthly installments. The first letter issued by applicant on the subject was Annexure A2 dated 06.01.2010, five years after Annexure R(2) b clarification denying him the higher pay was issued. The case is not only time barred but is devoid of merit as well. Hence OA is dismissed. No order as to costs.


(P.Gopinath)
Administrative Member


(N.K.Balakrishnan)
Judicial Member