

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHORIGINAL APPLICATION NO. 98/2012

CORAM Monday this the 28th day of September, 2015

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

Mariamma Samuel, aged 61 years
(Retd. Senior Stenographer)
National Institute for Interdisciplinary Science & Technology
Industrial Estate PO, Pappanamode
Trivandrum-695019
residing at Kadvacal Muttom South
Thattarambalam Po, Mavelikara,
Alleppey Dist.

...Applicant
(By Advocate Mr. T.C. Govindaswamy)

Versus

1. The Council of Scientific & Industrial Research,
Rafi Marg, New Delhi-110 001 through its Secretary.
2. The Director, National Institute for Interdisciplinary
Science & Technology,
Industrial Estate PO, Pappanamcode
Trivandrum.-695 019.

...Respondents

(By Advocate Mr. Thomas Mathew Nellimootil)

This application having been finally heard on 21.09.2015, the Tribunal
on 28.09.2015 delivered the following:

ORDER

Per: Justice N.K.Balakrishnan, Judicial Member

The applicant seeks a declaration that she is entitled to the grant



of 2nd financial up-gradation under the MACP Scheme. According to her she is entitled to reckon 50% of her service from 9.1.1978 or at least from 9.7.1978 to 5.3.1993 for the purpose of grant of financial up-gradation.

2. The applicant was initially appointed as a temporary Steno Typist in 1977. According to the respondents she was working on daily wages basis. Though she requested for grant of maternity leave it was rejected. Thereafter the applicant was appointed on contract basis with wage at the rate of Rs. 400/- per month w.e.f. 1.12.1981. The applicant contends that since her service was utilized against a regular sanctioned post she was entitled to be regularized. O.A earlier filed by her was withdrawn. She has then filed OA 17/1987. The CAT Ahmedabad Bench passed Annexure.A3 order . That OA was filed by the applicant and two other persons. All the three applicants were given a chance to clear the departmental examination according to the rules irrespective of age limit. Applicant failed in that examination. Though OA 27/2002 was filed by the applicant before CAT, Ahmadabad Bench that was also disposed of by that Tribunal rejecting her claim for the benefit of past service for the grant of ACP but directed the respondents to reckon 50% of service rendered by her prior to regularization for the purpose of pension and other retirement benefits vide Annexure. A.7 order. According to the applicant, if 50% of the service from 9.1.1978 is taken into consideration she would have a qualifying service of 22 years as on 1.9.2008 and in that process she would be entitled



to get 2nd financial up-gradation w.e.f. 1.9.1978. It is also contended that if 50% of service rendered between 15.1.1987 to 5.3.1993 is reckoned the applicant would complete the 20 years service as on 9.2.2010. Thus the applicant claims the grant of 2nd financial upgradation.

3. Respondents would contend that admittedly the applicant's claim for reckoning 50% of service for grant of ACP was rejected by the Ahmadabad Bench of the Tribunal as per Annexure.A7 order. That order became final. Though it was under ACP Scheme, it applies to the decision to grant of MACP benefit as well. The fact that 50% of service rendered by applicant prior to regularization was reckoned for the purpose of pension and other retirement benefits is no reason to say that the applicant is entitled to grant of MACP as well. The fact that in Annexure. A7 order the claim put forward by the applicant for grant of ACP was rejected would stultify the contention now raised by the applicant. Even otherwise, the claim made by the applicant is devoid of any merit, respondents contend.

4. It is pointed out that Annexure.R.2, which contains the CSIR letter dated 27.6.1994, would show that the CSIR in its meeting held on 12.1.1994 has approved conferment of temporary status in terms of GOI DOPT OM No.51016/2/90-Estt(C) dated 10.9.93 on the Daily wage/Casual Workers already identified for absorption under the aforesaid Scheme. As per para B (v) of Annexure R.2, 50% of the service rendered under Temporary Status would be counted for the purpose of retirement benefits



after their regularization and accordingly 50% of the service under Temporary Status as on 5.3.1993 had been counted for pensionary benefits. It is also not in dispute that the applicant was granted ACP benefit from the date of her appointment on 5.3.1993.

5. It is also borne out from records that the CSIR as per circular dated 13.5.2010 has adopted the Scheme of Govt. India DOPT OM No, 35034/3/2008-Estt(D) dated 19.5.2009. Annexure.R.4 is the true copy of that letter dated 19.5.2019. Para 9 of Annexure. R.4 reads thus:

"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 adhoc/contract basis before regular appointment on pre-appointment training shall not be taken into reckoning. However, past continuous regular service in another Government Department in a post carrying same grade pay 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."

6. Since it is made very clear that service before regular appointment on pre appointment training shall not be taken into reckoning and that the applicant commenced regular service from 5.3.1993 only the service rendered prior to that date cannot be counted for MACP Scheme as per the Government of India guidelines. The plea that 50% of casual service from 9.2.1978 to 5.3.1993 should be reckoned for the purpose of the

qualifying service for financial upgradtion under MACP scheme is also found to be bereft of any merit. The MACP Scheme was framed by DPO&T, the nodal department of the Government. The respondents have adopted that MACP Scheme and as such the contention to the contrary cannot be countenanced at all.

7. Counsel for the Applicant has very much relied upon Annexures.A.13 and A14 the circulars issued by Railway Board (RBE No. 215/09 dated 4.12.2009) and RBE No.36/2010 dated 25.2.2010) in support of his submission that the Railway Department has decided that 50% of temporary status as casual labour service on absorption in regular employment can be taken, to count for the minimum service for the benefit of MACP benefits and so on the same analogy the respondent department should be directed to reckon 50% of the casual service. The service conditions, pay and other allowances in one department cannot be directed to be applied in another department.

8. Since Annexure. R.4 is the scheme pertaining to MACP and since clause 9 therein stipulates the conditions, the applicants cannot contend that the respondents should follow the guidelines issued by some other department. Even according to the applicant if 50% of the service rendered by applicant from 15.1.1987 to 5.3.1993 is not added, she is not entitled to 2nd financial up-gradation.



