

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 219/2010

Monday, this the 31st day of October, 2011.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

M.G.Saraswathy,
W/o Chandran Pillai,
Store Keeper, Material Organisation,
Naval Base, Kochi-4.Applicant

(By Advocate Mr T.A.Rajan)

v.

1. Union of India represented by Secretary,
Government of India,
Ministry of Defence, New Delhi.
2. The Flag Officer Commanding-in-Chief,
Headquarters, Southern Naval Command,
Naval Base, Kochi-4.
3. The Chief Staff Officer (P&A),
Headquarters, Southern Naval Command,
Naval Base, Kochi-4.Respondents

(By Advocate Mr Sunil Jose, SCGSC)

This application having been finally heard on 25.10.2011, the Tribunal on 31.10.2011 delivered the following:

ORDER

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

Shorn of unnecessary details, the facts required for adjudication of this OA are as under:-

- (a) The applicant was initially engaged as casual labourer on 05.08.1983 and later on her services were regularized w.e.f. 01.12.1986. During the period of the applicant's casual labour

service, there was an artificial break for more than 30 days from 25-08-1984 to 18-10-1984. As per OM No. CS 2695/43/101 (Policy) dated 17-05-1994, it was decided that the period of long break exceeding 30 days (except such long break on maternity grounds in respect of female employees), the break be not condoned and (treating the re-engagement after such break as fresh casual labour service), regularization be made only after such break in service. In the instant case accordingly treating the applicant's services after the long break as mentioned above, effective from 19-10-1994, respondents had advanced the date of regularization from 01-12-1984 to 19-10-1984. Order at Annexure A-1 is the CE list containing the name of the applicant along with certain others, and reflecting her date of regularization w.e.f. 19-10-1984 with the remarks "Service from the date of initial appointment as shown against each has been regularized".

- (b) On introduction of ACP and MACP schemes, the question of reckoning the period of completion of 12/24 years (for ACP) and 10/20/30 years (for MACP) cropped up and it was, as per the scheme, such that only regular service shall be considered for such purpose. This means that the applicant's service would be reckoned only from 19-10-1984 onwards and not from the initial date of appointment in 1983. This has actually deferred the date of consideration of ACP to the applicant which would have adverse recurring monetary effect involved.



2. The applicant has, thus, filed this OA seeking the following reliefs:-
- i) Declare that the applicant is entitled to be regularised in service from 5.8.1983, the date of his initial appointment as Assistant Storekeeper on casual basis and also entitled to get second financial upgradation benefits from 5.8.2007 with all consequential benefits.
 - ii) Direct the respondents. To regularise the service of the applicant from the date of his initial appointment as Assistant Storekeeper on casual basis duly condoning the artificial breaks and also direct to grant the second financial upgradation benefits from 5.8.2007 and further direct the respondents to grant the consequential arrears with 19% interest.
3. Respondents have contested the OA, mainly relying upon the issue of order dated 17-05-1984 whereby it was decided not to condone long break of 30 days and more and since in this case, the break exceeded 30 days from 15-08-1984 to 18-10-1984, the period of regular service has been rightly counted from 19-10-1984.
4. The applicant has filed the rejoinder in which it has been contended that notwithstanding the fact that the guidelines indicated that break in service only upto 30 days could be condoned, the Tribunal in a few past decisions held that such guidelines would have only prospective effect.

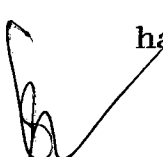


5. Counsel for the applicant succinctly brought out the entire facts of the case and also submitted that the guidelines (prescribing the maximum period of break in service beyond which the earlier services would not be taken into account for regularization) would have only prospective effect and in this regard he has placed reliance upon the decision of this Tribunal in OA No. 434/89 and 609/89 and OA No.732 of 2006 decided on 18-06-2009.

6. OA 434/89 and 609/89 also dealt with a like issue in respect of applicability of a guidelines published on 27-05-1980 and it was held by the Full Bench that such guidelines would not apply to regularization from the date prior to the date of its issue. Order in OA No. 732 of 2006, which also refers to the abovementioned order of the Tribunal in OA No. 434/89, inter alia has held as under:-

“We are also of the considered opinion that the guidelines as issued by the respondents on 17-5-1994/8-7-1994 will not apply to regularization from dates prior to the issue of these guidelines.”

7. Thus consistently the view of the Tribunal has been that guidelines relating to regularization of casual labours have only prospective effect. The decision has been fully implemented in the case of the applicants in the O.As. In other words, the respondents have regularized the services right from the beginning of the period of casual labour service, irrespective of intermediate break for a period beyond thirty days, to all those who have approached the Court and similarly situated individual have not



been extended the benefit. When one such individual had approached the Tribunal in OA No. 715 of 2008, vide order dated 19th~~th~~ August, 2009, this Tribunal, after considering various decisions of the Apex Court and also the recommendation in para 126.5 of the V Pay Commission, held that similarly situated cases should all be dealt with accordingly without forcing such persons to move the matter before the Court. The decisions relied upon and the pay Commission recommendations, as extracted from the order dated 19-08-2009 read as under:-

"8. ***In Inder Pal Yadav v. Union of India, (1985) 2 SCC 648***, the Apex Court has held as under:-

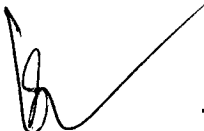
"... those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court.

9. The Apex Court as early as in 1975 in the case of ***Amrit Lal Berry v. CCE, (1975) 4 SCC 714***, held as under:-

We may, however, observe that when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court.

10. The V Central Pay Commission in its recommendation, in regard to extension of benefit of court judgment to similarly situated, held as under:-

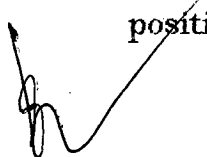
"126.5 – Extending judicial decisions in matters of a general nature to all similarly placed employees. - We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of Central Administrative Tribunal, Bangalore in the case of C.S. Elias Ahmed and others v. UOI & others (O.A. Nos. 451 and 541 of 1991), wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like G.C. Ghosh v. UOI, [(1992) 19 ATC 94 (SC)],



dated 20-7-1998; K.I. Shepherd v. UOI [(JT 1987 (3) SC 600)]; Abid Hussain v. UOI [(JT 1987 (1) SC 147], etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing the other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of Government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee."

8. The Tribunal in the decision in OA 732/2009 vide para 9 thereof clearly held that the guidelines (dated 17-05-1994/3-7-94) have prospective validity. As such, the said guidelines cannot be invoked in the case of the applicants in whose case the break in service was only in 1984. As such, in the case of the applicant herein also, the date of regularization should be right from the date of initial entry in the casual labour service, which is 05-08-1983. This would mean that the applicant completed 24 years of service by 05-08-2007. Accordingly, benefit of ACP scheme should be considered in the case of the applicant from 05-08-2007 onwards.

9. The O.A. is thus, allowed. Respondents are directed to reschedule the date of regular service of the applicant from 05—8-1983 and accordingly consider her for grant of 2nd ACP from 05-08-2007. If found suitable for grant of the ACP scheme, the pay would be accordingly revised and the arrears accrued thereon should be worked out and paid to the applicant within a period of four months. Her seniority shall, however, not undergo any change as the same would affect the seniority position of others, unlike the case of ACP which is based on completed



years of service without affecting any other individual.

10. No order as to costs.



K NOORJEHAN
ADMINISTRATIVE MEMBER



Dr K.B.S. RAJAN
JUDICIAL MEMBER

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