

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.228/2012

Wednesday this the 24th day of June 2015

C O R A M :

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE Ms.P.GOPINATH, ADMINISTRATIVE MEMBER

P.K.Soudamini,
W/o.late T.Mohanan,
Lower Division Clerk,
Sports Authority of India,
Training Centre, Thrissur.

...Applicant

(By Advocate Mr.P.Ramakrishnan)

V e r s u s

1. Union of India represented by Secretary,
Department of Youth Affairs,
Sports, New Delhi – 110 001.
2. Sports Authority of India
represented by its Director General,
Head Office, JN Stadium Complex,
East Gate, Lodhi Road, New Delhi – 110 003.
3. The Director (Pers & Coaching),
Sports Authority of India, JN Stadium Complex,
East Gate, Lodhi Road, New Delhi – 110 003.
4. The Deputy Director (Pers.),
Sports Authority of India,
Netaji Subhas Southern Centre,
Mysore Road, Bangalore – 560 056.
5. Secretary,
Sports Authority of India (Personal Division),
Sports Authority of India Head Office,
JN Stadium Complex, East Gate,
Lodhi Road, New Delhi – 110 003.

...Respondents

(By Advocates Mr.S.R.K.Prathap,ACGSC [R1]
& Mr.Govindh.K.Bharathan [R2-5])



This application having been heard on 24th June 2015 this Tribunal on the same day delivered the following :

ORDER

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

Applicant is a Lower Division Clerk (LDC) in the Sports Authority of India. She states that her husband was an Athletic Coach under the Respondent No.2 and died while in service. She was granted appointment as LDC vide Annexure A-1 on 21.12.1995 on compassionate grounds, on a temporary basis. Annexures A-2 to Annexure A-7 indicate that she had been continuing in the same post by orders granting extension of the appointment from time to time. She was being granted increments and other benefits from time to time as if she was a regular employee. She has been granted ACP also on completion of 12 years of regular service vide Annexure A-5. On implementation of the 6th Pay Commission recommendations her pay was fixed in the revised pay band of Rs.5200-20200/- with a grade pay of Rs.1900/- vide Annexure A-6 Office Order dated 10.11.2008. Subsequently, on granting annual increment her pay was raised to Rs.8560/- in the pay band of Rs.5200-20200 with a grade pay of Rs.2400/- with effect from 1.7.2009 vide Annexure A-7 Office Order dated 16.7.2009. Thereafter respondents issued Annexure A-8 order dated 27.1.2010 stating that she, among others who had been working on adhoc basis on compassionate grounds, has been appointed on regular basis to the post of LDC in the pay scale of Rs.5200-20200/- with a grade pay of Rs.1900/- with effect from 29.12.2009. Thereafter respondents issued another Office Order dated 10.2.2010 withdrawing the first ACP granted to

8

3.

her with effect from 23.1.2008 on the ground that she was a adhoc employee and was not qualified for the benefits of ACP. Aggrieved by this the applicant submitted Annexure A-11 representation to Respondent No.3 explaining that she was not a casual or temporary employee but was a regular employee and requested for reconsidering the decision to withdraw the ACP benefits. Soon thereafter the applicant had approached this Tribunal vide O.A.No.857/2010 praying for a direction to the respondents to treat her as having been regularly appointed with effect from 23.1.1996 and to restore her first ACP.

2. By Annexure A-13 order dated 25.10.2011 this Tribunal allowed the O.A.No.857/2010 in part. The relevant portions of that order are extracted below :

5. A perusal of Annexure A-1 order dated 21.12.1995 appointing the applicant as Lower Division Clerk, shows that she was appointed purely on a temporary basis for a period of six months. Her appointment was extended from time to time. But the applicant is not in a position to substantiate her position that she was a regular employee by producing any order regularizing her service before 29.12.2009. Respondents aver that she was regularized vide Annexure A-8 order dated 27.1.2010 with effect from 29.12.2009. They also admitted that she was granted the first financial upgradation under the ACP scheme erroneously. The benefit of ACP scheme is extended only to regular employees who have completed 12 years of regular service. The respondents have every right to correct a mistake committed by them. On withdrawing the benefit of ACP scheme the applicant's pay was reduced. This cannot be termed as arbitrary or illegal.

6. Applicant had passed the typing test on 25.11.1998 whereupon increments which were withheld were released with effect from 1.1.1997. The applicant who entered in service on 23.1.1996 was regularized on 29.12.2009 only. The respondents have not explained that why the regularization of the applicant was inordinately delayed. Immediately after passing the typing test on 25.11.1998 she

2

.4.

could have been regularized in service. The representation of the applicant dated 24.2.2010 is still under the consideration of the respondents. It would be only fair and just if her representation is considered by the respondents without further loss of time.

7. The respondents are directed to consider her representation cited above and dispose of the same by a speaking order and communicate the order to the applicant within a period of 60 days from the date of receipt of a copy of this order.

3. Respondents in their reply affidavit states that the applicant had been granted the benefit of ACP erroneously and hence the same had been withdrawn. According to the respondents, as there was no vacant post of LDC available from the time the applicant was appointed on temporary basis on compassionate ground till the order of 2009 hence the claim of the applicant that she has already been treated as a regular employee since 23.1.1996 is not correct. Qualifying in the typing test is a basic requirement for appointment as LDC. Even after the applicant has passed the typing test, she was not regularised, keeping her appointment adhoc and being extended from time to time. Respondents assert that she was regularised only with effect from 29.12.2009 as per Annexure A-8 order dated 27.1.2010.

4. In the present O.A the applicant is aggrieved by Annexure A-14 order passed by the respondents rejecting her grievance stated in the Annexure A-11 representation and by the view taken by respondents that her regularisation was effected only from 29.12.2009, not from 23.1.1996. In the above backdrop applicant seeks the following reliefs from this

Tribunal :



.5.

1. Issue an order quashing and setting aside Annexure A-8 and A-9, A-10 and A-14.

2. Issue an order directing the respondents to treat the applicant as having been regularly appointed as LDC with effect from 23.1.1996 and restore the 1st ACP granted as per Annexure A-5 and consequential band pay and grade pay.


3. Or in the alternate, direct the respondents to regularize the applicant in service with effect from 23.1.1996 and

4. Such other orders and directions as are deemed fit in the facts and circumstances of the case.

5. We have heard the learned counsel appearing for the applicant and the learned counsel appearing for Respondent Nos.2-5 and Shri.SRK Prathap, learned ACGSC appearing for Respondent No.1.

6. We take note that in the earlier round of litigation this Tribunal vide Annexure A-13 has upheld the action of the respondents in withdrawing the ACP benefits finding that the benefit of ACP Scheme is extended only to regular employee who has completed 12 years of service and that the respondents have every right to correct the mistake committed by them and observing that the withdrawal of the benefit of ACP Scheme cannot be termed as arbitrary or illegal. Since Annexure A-13 order has attained finality, the above findings also have become final.

7. We take note that in the Annexure A-13 order quoted above this Tribunal has made an observation that immediately after passing the typing test on 25.11.1998 the applicant could have been regularised in service. Despite this observation, respondents rejected Annexure A-11



.6.

representation pointing out that there was no vacancy of LDC available to accommodate the applicant till 29.12.2009. We are of the view that this stand of the respondents is quite unacceptable in the circumstance that the applicant was allowed to work on adhoc basis continuously from 21.12.1995 without any break and was granted increments from time to time, treating her like a regular employee and at the same time admitting that she was given appointment on compassionate ground.

8. When appointments are granted on compassionate basis, if the person so appointed is not possessing the required qualification, especially if that person is the widow of the deceased employee, she would be given opportunity to improve her qualification to make her suitable for regular appointment. In this case we note that while remaining in adhoc employment the applicant had qualified in the typing test and became eligible to be appointed as a LDC. This Tribunal in Annexure A-13 has clearly observed that immediately after passing the typing test on 25.11.1998 she could have been regularised in service. Yet the respondents took the stand that there was no vacancy available for the LDC. We find that this contention is unjustifiable because the applicant had been treated by the respondents as a regular employee, extracting work from her.

9. During arguments it was submitted by learned counsel for the applicant that applicant has retired on superannuation on 31.5.2013. Therefore, the fruits of this litigation will be available to her only in the



7.

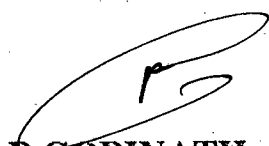
form of retirement benefits. We are of the view that if notional benefit of antedating the regularisation is made in favour of the applicant, rights of other employees would not be affected.

10. For the reasons stated above, we direct the respondents to consider the applicant as having been notionally regularised as LDC with effect from 25.11.1998 and to give her the consequential effect in her retirement benefits. The respondents shall calculate the pensionary benefits of the applicant in accordance with this order within six months from the date of receipt/presentation of a copy of this order.

11. The original service records relating to the applicant produced by the Respondent Nos.2-5 shall be returned to those respondents.

12. The Original Application is disposed of as above. We make it clear that we have decided this case in the light of the observations in Annexure A-13 order of this Tribunal. No order as to costs.

(Dated this the 24th day of June 2015)



P.GOPINATH
ADMINISTRATIVE MEMBER


U.SARATHCHANDRAN
JUDICIAL MEMBER