CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

A

ORIGINAL APPLICATION Nos.289 of 2007 & 329 of 2007

Dated the..11th July, 2008

C O R A M:

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

KG Ushakumari,
Stenographer Gr.III
INS Venduruthy, Southern Naval Command,
Kochi-4. Residing at House No.L 32
Kasthurba Nagar, Kochi-20. (Applicant in OA 289/07)

Suja Zavier,
Wife of Zavier Jesudasan,
Stenographer Gr.III
INS Dronacharya, Southern Naval Command,
Kochi-4. Residing at House No.15/2027,
Vazhuvelil House, Moolankuzhy, Kochi-2, (Applicant in OA 329/07)

(By Advocate :Mr. Harisharma M)

-Versus-

1. Union of India, represented by the
   Secretary to the Government of India,
   Ministry of Defence, New Delhi.
2. The Chief of the Naval Staff,
   Naval Headquarters, New Delhi.
3. The Flag Officer Commanding in Chief,
   Southern Naval Command, Kochi-4.
4. The Senior Staff Officer (CP) 1,
   HQ Southern Naval Command, Kochi-4.

Respondents in both OAs

(By Advocate :Mr TPM Ibrahim Khan, SCGSC & Ms Jisha)

The application having been finally heard on 7th July, 2008, the Tribunal delivered the following on 11-07-08.

ORDER

(Hon'ble Dr.KBS Rajan, JM)

These two OAs are to be disposed of by a common order as the facts and legal issues involved in the above two OAs are one and the same.

2] The facts of the Case in OA No.329/07 are as under:

The applicant joined the service as Stenographer on casual basis on 16.3.83. The service was extended from time to time with intermittent breaks. When services of the applicant as Stenographer could not be availed of, she was continued in service but as Lower Division Clerk (LDC) in a lower pay scale. Thus from 25.10.84 to 30.6.88 the applicant had been in the lower post as LDC on casual basis. However, w.e.f. 18.8.88 she was absorbed as Stenographer.

3] Government have introduced the Financial Upgradation Scheme, what is called, "Assured Career Progression Scheme" (ACP Scheme), which provides for two financial upgradation on completion of 12 years and 24 years of regular service in case there is no promotion during this period. According to the applicant, since her initial appointment was w.e.f. 1983, her entitlement for two financial upgradation would be respectively wef. 09.8.99 (date of coming in for force of the Scheme) and 16.3.2007. Respondents have however stated that the applicant's regular appointment commencing from 4th July, 88 as the period of 12 years and 24 years for financial upgrdation would be reckoned only from that date. The applicant thus has filed this OA seeking the following relief:

"(i) Declare that the applicant is entitled to get the service regularised from the date of initial appointment on casual basis, by condoning the technical breaks with all consequential benefits.

(ii) Declare that applicant is entitled to get the benefits under the ACP Scheme, from the initial date of appointment on casual basis, taking into account the total service on casual basis both as Stenographer and LDC, for counting the total period of service.

(iii) Call for the records leading to issuance of Ann. A3-4 and quash the same, to the extent they refuse the benefit to the applicant to take into account, the period of casual service rendered as LDC, for counting the total period of casual service.

(iv) Declare that clarification No.8 published by the DOPT vide OM No. 35034/1/97 Estt (D) dated 10.2.2000 has no application in the case of the applicant.

(v) Direct the respondents to pay the consequential benefits along with interest @ 10% from the actual date of entitlement, till the date of payment".

4] The facts of the Case in OA No.289/07 are as under:

The applicant joined the service as Stenographer on casual basis on 06.01.82. The service was extended from time to time with intermittent breaks. When services of the applicant as Stenographer could not be availed of, she was continued in service but as Lower Division Clerk (LDC) in a lower pay scale. Thus from 06.11.84 to 12.06.87 the applicant had been in the lower post as LDC on casual basis. However, w.e.f. 18.8.88 she was absorbed as Stenographer.

5] As stated hereinabove, Government have introduced the Financial Upgradation Scheme (ACP Scheme), which provides for two financial upgradation on completion of 12 years and 24 years of regular service in case there is no promotion during this period. According to the applicant, she is entitled to get the

entire period of service counted from the initial date of appointment on casual basis, for the purpose of granting the benefits under the ACP Scheme and filed this OA seeking the same relief as in the other OA 329/07.

6] Respondents have contested the OAs. As per existing policy of ACP Scheme financial upgradation could be extended on completion of 12/24 years from the date of regular appointment (absorption date), which is treated for the purpose of promotion. However, regular appointment including the services rendered on casual basis which are subsequently regularised in one post is counted for all purposes except for promotion and ACP benefits. In the instant case, the applicants were initially appointed as Stenographers and absorbed in the same posts, but they had held the posts of LD Clerks carrying lower scale of pay for a period of over two years in casual capacity. Though the entire period of casual service in the posts of Stenographer/LDC has been regularised, it cannot be treated as regularisation in a particular post for consideration to extend the benefits of ACP Scheme.

7] Applicants have filed rejoinders to the aforesaid reply, wherein they have annexed copy of the seniority list of Stenographer Gr-III as on 31.8.97. It is the case of the applicant in OA 289/07 that from the remarks column of the seniority list it could be seen that she was appointed as Stenographer (Casual) on 6.1.82 and absorbed on 18.8.88. Thus, her case should be treated as having served as Stenographer throughout the entire service rendered on casual basis as

Stenographer. The applicant in OA 320/07 was appointed on 16.3.83 and absorbed on 18.8.88 as Stenographer (Casual).

8] Though initially at the time of hearing the counsel for the applicants was not present and the case was reserved for orders after hearing the other side, later on the counsel for the applicants appeared and submitted that the case of the applicants is identical with that decided in OA No.820/2005(CK Rajeswari & Anr -v- Union of India and ors).

9] Arguments were heard and documents perused. Admittedly both the applicants initially served as casual Stenographers followed by regularisation; And in between they had also served as LDCs. Identical is the case of the applicants in OA 820/05. The impugned order therein is also identical. In the other case, ACP was directed to be granted taking into the earlier service of Stenographers though it was on adhoc basis. This order of the Tribunal is stated to have been implemented as well. The applicants are serving under the same organisation, viz. Southern Naval Command. So was the applicant in OA 820/05. In identical circumstances, if the applicant in OA 820/05 could be granted ACP there is no cogent reason why the same treatment be not extended to the applicants in these OAs. If for any reason there happens to be any minor difference between the cases in hand and other in OA 820/05, it has to be seen whether it affects the equality clause. If it opposes the equality clause it should be removed and identical treatment should be given to the applicants herein.

10] In view of the above, these OAs are disposed of with a direction to the Respondents to verify whether the cases of the

applicants in these OAs and one in OA 820/05 are identically placed in so far as the initial adhoc appointments as Stenographers, intermediate reversion as LDCs and ultimate regularisation as Stenographers are concerned. If they are identical, the respondents shall extend the same benefit as given to the applicants in OA 820/05. This order shall be complied with within a period of three months from the date of receipt of copy of this order. No order as to costs.

(Dr. K.S. Sugathan)
Administrative Member

(Dr.K.B.S. Rajan)
Judicial Member

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