

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

OA Nos.436/04, 437/04 & 48/2005.

Jaipur, this the 9th of August, 2005.

CORAM : HON'BLE MR. M. L. CHAUHAN, JUDICIAL MEMBER.
HON'BLE MR. M. K. MISRA, ADMINISTRATIVE MEMBER.

Sunil Kumar Saraswat
S/o Shri Ramesh chand Saraswat,
Aged about 36 years,
R/o 89, Shivaji Nagar,
Civil Lines,
Jaipur.

... Applicant in OA No.436/2004.

Lokesh Jain
S/o Late Shri Rajmal Jain
Aged about 35 years,
R/o B-90, Janta Colony,
Jaipur.

... Applicant in OA No.437/2004.

Divesh chawla
S/o Shri Kishan Chawla
Aged about 35 years,
R/o 57-B, Ram Gali No.7,
Raja Park, Adarsh Nagar,
Jaipur.

... Applicant in OA No.48/2005.

By Advocate : Shri P. N. Jatti.

VS.

1. Union of India
Through the Registrar General to
Govt. of India,
Department of Census, Ministry of Home Affairs 2-A,
Mansingh Road, New Delhi 110 011.
2. The Director,
Director of Census Operation,

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

APPLICATION NO.: _____

Applicant(s)

Respondent (s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

09.08.2005

OA No. 48/2005 with MA 220/2005

Mr. P.N. Jatti, Counsel for the applicant.


Mr. Gaurav Jain, Counsel for the respondents.


Heard the learned counsel for the parties.

MA No.220/2005 has been filed by the respondents for taking document/office order dated 02.06.2005 whereby the applicant has been granted the benefit of ACP Scheme after completion of 12 years of service w.e.f. 26.3.2005.

In view of the averments made in the MA, the MA is allowed. The document annexed with this MA is taken on record. The MA shall stand disposed of accordingly.

In view of the reasons dictated separately, the OA is allowed.


(M.L. MISRA)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ

Govt. of India, 6-B, Jhalana Doongri,
Jaipur.

... Respondents.

By Advocate : Shri Gaurav Jain.

: O R D E R (ORAL) :

By this common order, we propose to dispose of the aforesaid three OAs as common question of facts and law is involved in these cases.

2. Briefly stated, the facts of the case are that all the applicants were initially appointed on the post of Data Entry Operator Grade-B purely on temporary and ad hoc basis as per appointment letter dated 10.12.91 (Annexure A/3) from the date of their joining service in October, 1991 for the period ending 29.2.1992. Their ad hoc appointment was continued. By letter dated 5.5.93 services of the applicants were regularized w.e.f. 26.3.93 along with other persons mentioned therein.

3. The grievances of the applicants in these OAs is that the ad hoc services followed by their regularization w.e.f. 26.3.93 should be counted for the purpose of calculating 12 years of service for the purpose of ACP. It may be stated here that during the pendency of these OAs the applicants have placed on record copy of order dated 2.6.2005 whereby all the applicants have been granted ACP w.e.f. 26.3.05. Thus, the only question

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which requires our consideration in this case is whether the applicants are entitled for the grant of benefit under ACP Scheme w.e.f. October 2003 or they have been rightly granted benefit of ACP w.e.f. 26.3.2005 pursuant to the order dated 2.6.05.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

5. At the outset, it may be stated that the matter is squarely covered by the judgment rendered by this Tribunal in the case of S. N. Kumawat vs. Union of India & Ors., OA No.430/2004 decided on 5.8.2005. The applicant in OA No.430/2004, Shri S. N. Kumawat, was also appointed on the post of Data Entry Operator Grade-B vide letter dated 10.12.91 along with the applicants of these OAs and they were also regularized by common order dated 5.5.93 w.e.f. 26.3.93. The controversy raised by Shri S. N. Kumawat in earlier OA was the same as raised by the applicants in these OAs viz whether the services rendered by the applicants on ad hoc basis should be taken into consideration for the purpose of calculating the complete 12 years of service for the grant of ACP in terms of ACP Scheme as notified vide OM dated 9.8.99. This Tribunal after taking into consideration the judgement rendered by this Bench in the case of Arnold Grey & Ors. vs. Union of India & Ors., in OA No.197/2000 decided on 7.12.2001 allowed the OA filed by Shri S. N. Kumawat. At this

judgment it was observed that the Govt. quarters belonging to Type-III may be allotted from the pending applications as per the seniority. It is further stated that out of 35 applications only 4 persons has taken possession of the Govt. accommodation and remaining employees have refused to get possession of the Govt. quarters and, therefore, by virtue of provisions of SR 317-B-10(i) debarred and ordered to deduct HRA in view of HRA Rule 4(b) (i).

4. The respondents No. 2 and 3 have also moved a Misc. Application No.292/2005 whereby it has been stated that 19 departments of the Central Government, particulars of which have been given in the Misc. Application, be directed to furnish list of their employees for preparation of seniority list for allotment of Govt. quarters so that allotment can be made according to rules and direction given by this Tribunal in the case of Dr. R.K.Das can be strictly complied with.

5. I have heard the learned counsel for the parties and gone through the material placed on record.

5.1 The learned counsel for the applicant has confined his arguments only on one point. According to the learned counsel for the applicant, even if it is assumed that the applicant has not applied for

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respondents that the initial appointment of the applicants was de-hors the rules. They have been appointed after the due process and by a competent authority. This becomes clear from the letter of appointment itself. This being the case and they having continued for so many years, in our considered view, the applicants are entitled to count their services right from 30.11.1983. This is more so when in the same Department Statistical Assistants and computes appointed on ad hoc basis, like the applicants, in the year 1981 have been allowed to count their ad hoc services for the purpose of seniority as well as for eligibility for promotion to the higher grades. In this background, we are of the view that the applicants are fully entitled to count their seniority from the date of their initial appointment i.e. from the year 1983. It is clear that they have already completed the requisite qualifying service of 12 years to become eligible for first financial upgradation under the ACP Scheme."

Accordingly, the OA was allowed and directions were given to the respondents to grant benefit of Assured Career Progression Scheme in terms of DOP&Ts letter dated 9.8.99 by taking into consideration their ad hoc services as Data Entry Operator Grade-B.

7. As already stated above, we are of the firm view that the case of the applicant is fully covered by the decision of this Tribunal in the case of Arnold Grey & Ors. (supra). In fact, the respondents have granted the ACP benefit to two of the applicant namely Smt. Vandana Agrawal and Smt. Sunita Rani by taking their ad hoc service as Data Entry Operator Grade-B into account for the purpose of ACP who were regularized along with the applicant by the same order Annexure A/4. We see no reason why the respondents have adopted different criteria for similarly situated persons who were also regularized vide order dated 5.5.93. It has come on record that the initial appointment of the applicant was not de hors the rule but he was appointed after following the due process by the competent authority. Thus, in terms of the law laid down by the Apex Court in the case of Direct Recruit Class-II Engineers Officer's Association vs. State of Maharashtra, reported in 1990 SCC (L&S) 339, the seniority has to be counted from the date of initial appointment. Moreover the respondents in their reply have not uttered even a single word as to how the judgement rendered by this Tribunal in the case of Arnold Grey (supra) is

not applicable in the facts and circumstances of this case."

6. The reasoning given by this Tribunal in the case of S. N. Kumawat (supra) and reproduced above, is squarely ^{is applicable} in the facts and circumstances of these cases. Accordingly, these OAs (OA No.436/2004, 437/2004 & OA No.48/2005) are allowed and the respondents are directed to grant the benefit of Assured Career Progression Scheme in terms of DOP&Ts letter dated 9.8.99 after taking into consideration the ad hoc service of the applicants as Data Entry Operator Grade-B. Respondents are directed to comply this order within a period of 2 months from the date of receipt of a copy of this order.

(M. K. MISRA)
ADMINISTRATIVE MEMBER

(M. L. CHAUHAN)
JUDICIAL MEMBER

P.C./