

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH**

**OA. No. 060/00110/2014
(Reserved on 29.01.2015)**

Chandigarh, this the 9th day of March, 2015

**CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS.RAJWANT SANDHU, MEMBER(A)**

1. MES No. 507869 Sh. Arvind Rai, MPA FGM.
2. MES No. 508302 Yuvraj Singh, Electrician H.S. II
3. MES No. 507866 Babu Ram, W/M Electrician H.S.II
4. MES No. 507755 Bachan Lal, Electrician H.S.II
5. MES No. 508330, Ashok Kumar, SBA, Electrician HS.
6. MES No. 508698, Ram Ditta, MPA, FGM
7. MES No. 508322 Sh. Jarnail Singh, FGM
8. MES No. 508305 Ashok Kumar, Electrician H.S.
9. MES No. 508706 Arjan Singh, OED, FGM
10. MES No. 508306 Pardeep Kumar, PHO FGM
11. MES No. 508318 Vijay Kumar, MPA FGM
12. MES No. 508702 Shiv Singh, SBA Sk Electrician
13. MES No. 507875 Mehar Chand Maz, Sk. Electrician
14. MES No. 508303 Rajesh Kumar Electrician HS
15. MES No. 508312 Ram Dyal PHO, FGM
16. MES No. 508259, Karam Chand Sk.Electrician
17. MES No. 508267 Gurbachan Lal, Sk. Electrician
18. MES No. 508262 Naresh Singh Sk. Electrician
19. MES No. 508308 Surjit Singh FGM HS
20. MES No. 508275 Jaswinder Singh Mate Electrician
21. MES No. 507788, Khem Raj MPA, FGM
22. MES No. 508255 Gurdev Singh Maz. FGM
23. MES No. 508276 Chaman Lal, Maz. Sk. FGM
24. MES No. 508711 Roshan Lal MPA FGM Sk.
25. MES No. 508277 Tilak Raj FGM Sk.
26. MES No. 507868 Ashok Kumar, MPA FGM
27. MES No. 508693 Joginder Lal FGM HS II

- 28. MES No. 507745 Jagir Singh Mate FGM
- 29. MES No. 507773 Sukhdev Singh MPA FGM
- 30. MES No. 508713 R.C. Michael Mate/FGM
- 31. MES No. 508712 Balbir Singh FGM
- 32. MES No. 507867 Bodh Raj Electrician HS
- 33. MES No. 507857 Kishori Lal Electrician HS
- 34. MES No. 507775 Satnam Singh FGM HS I
- 35. MES No. 507742 Ranjit Singh, Electrician Sk
- 36. MES No. 507789 Joginder Pal MPA FGM
- 37. MES No. 508697 Bharat Singh MPA FGM
- 38. MES No. 508271 Gurdial Singh FGM Sk.
- 39. MES No. 508311 Som Raj MPA FGM
- 40. MES No. 508707 Jagdev Singh OED FGM
- 41. MES No. 508710 Rakesh Kumar FGM Mate
- 42. MES No. 507774 Rajesh Kumar MPA
- 43. MES No. 507776 Mangal Singh, MPA.

(Applicants No. 1 to 43 are presently working in the office of Garrison Engineer (South), Mamur, Pathankot)

- 44. MES No. 508304 Onkar Singh
- 45. MES No. 508709 Manohar Lal, Electrician Sk
- 46. MES No. 508258 Sh. Ashok Kumar, FGM
- 47. MES No. 507777 Parshotam Lal, Electrician H.S.II
- 48. MES No. 508265 Balwant Raj, Electrician Sk.
- 49. MES No. 507756 Balraj Kumar, Electrician H.S.II
- 50. MES No. 507747 Thur Singh Mate P/F
- 51. MES No. 508266 Loe Dass, Mazdoor (Painter)
- 52. MES No. 508708 Sukhwinder Singh, Electrician HS
- 53. MES No. 507865, Tara Chand, Mason.
- 54. MES No. 508256 Chaman Lal Mate Carpenter.

(Applicants No. 44 to 54 are presently working in the office of Garrison Engineer (North), Mamun, Pathankot)

- 55. MES No. 507796 Sh. Manjit Kumar, FGM presently working under GE Palampur.

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.....Applicants

BY ADVOCATE: **MR. JAGDEEP JASWAL**

VERSUS

1. Union of India through Secretary, Government of India, Ministry of Defence, New Delhi.
2. The Engineer-in-Chief, Army Headquarters, DHQ, PQ, Kashmir House, New Delhi- 110 011.
3. HQ, Chief Engineer, Western Command, Chandimandir.
4. Commander Works Engineer, 5241 C/o 56 APO.
5. Garrison Engineer (South), Mamum, Pathankot.
6. Garrison Engineer (North), Mamun, Pathankot
7. Garrison Engineer, Palampur,

.....Respondents

BY ADVOCATE: **MR. G.S. SATHI**
ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-
 - “(i) That the present joint application qua all the applicants be allowed being similarly situated and seeking similar relief from the answering respondents.

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- (ii) Impugned order dated 13.12.2013 (Annexure A-1) be quashed and set aside being wholly illegal and arbitrary and also discriminatory in the eyes of law.
- (iii) Respondents be directed to grant the applicants benefit of counting of their daily rated service for the purpose of grant of all financial benefits to them and further direct in terms of the judgements A-2, A-3 and A-5 respectively and to further extend them benefit of arrears on financial upgradations with all other connected benefits, arrears thereof with interest @ 12% per annum within a fixed time frame."

2. The applicants have filed the present joint application under Rule 4(5)(a) of the CAT (Procedure) Rules, 1987 to avoid multiplicity of litigation having a similar cause of action and relief prayed being also the same. The applicants were initially appointed on different posts on daily wage basis and have been regularized from different dates as per details in statement at Annexure A-6. In the OA, reference has been made to the Assured Career Progression Scheme (ACP for short) dated 9.8.1999 (Annexure A-7) and Modified Assured Career Progression Scheme (MACPS) dated 19.5.2009 (Annexure A-8) that were introduced by Government of India to remove stagnation amongst employees who remained without any avenue of promotion for long years.

3. Averment has been made in the OA that similarly placed employees who were also denied the benefit of counting of their daily-rated service for the purpose of financial upgradation under the ACP

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Scheme filed 74 OAs before the Bombay Bench of CAT. OA No. 193/2011 and others were decided on 12.9.2011 through a common order (Annexure A-2) and it was held in para 10 of the judgement that all the applicants were entitled to count the benefit of daily rated service for the purpose of ACP & MACPS. The applicants moved a legal notice dated 10.11.2013 (Annexure A-9) which had been rejected by respondent No. 5 denying the benefit of daily rated service for the grant of financial upgradation under the ACP and MACP Schemes in violation of settled law in the case of Karan Anant Purao in OA No. 193/2011 upheld by the Bombay High Court in WP(L) No. 1202/2012 decided on 24.7.2013.

Hence this OA.

4. In the grounds for relief, it has been stated as follows:-

(i) The claim of the applicants for extending the benefit of counting the daily rated service for the purpose of granting financial upgradations is squarely covered by the settled law in the case of Karan Anant Purao and others, OA No. 193 of 2011 decided by CAT Bombay Bench on 12.9.2011 with 74 connected OAs (Annexure A-2) and upheld by the Hon'ble Bombay High Court in WP (L) No. 1202/2012 decided on 24.7.2013 (Annexure A-3) vide which the Ministry of Defence has been directed to extend the benefit of services rendered prior to the date of regularization for the purpose of grant of financial upgradations under the ACP/MACP Schemes in question. These judgements have been implemented in respect of the applicants. Hence, the non-implementation of the judgements in the case of the applicants by extending the benefit of service rendered by the applicants prior to the date of regularization by counting their daily rated LDC service alongwith regular LDC service for the purpose of grant of financial

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upgradations, amounts to discrimination and arbitrary action on the part of the respondents and violation of Articles 14 and 16 of the Constitution of India and is liable to be invalidated by this Court.

- (ii) The impugned order dated 13.12.2013 (Annexure A-1) passed by the respondent No. 5 without even consulting the Ministry of Defence and based on judgement dated 18.1.2011 passed by this Tribunal is not sustainable in the eyes of law as the recent judgement of Bombay High Court dated 24.7.2013 will prevail over the same being the recent law. Furthermore, in the case which has been relied upon by the respondents, the claim of the applicants therein was also for counting of daily rated service for the purpose of seniority and promotion and the limited relief which applicants are praying in the present case is the benefit of financial upgradations under the ACP/MACP Scheme and therefore, they are duly entitled to the said limited benefits.
- (iii) The judgement of Hon'ble Bombay High Court has also been followed by this Tribunal in the case of Naresh Kumar Dogra Vs. UOI & Ors. (OA No. 448/JK/13 decided on 17.9.2013 (Annexure A-5) and therefore, applicants herein cannot be denied the similar benefits.
- (iv) The judgements Annexure A-2 and Annexure A-3 have been implemented by the respondents qua the applicants in those cases. Once Ministry of Defence has taken a decision to count the daily rated service for the purpose of financial benefits qua applicants in the aforesaid cases, similar benefit cannot be denied in the present case. In this regard, reference is made to the judgements of Hon'ble Supreme Court of India in the case of K.C. Sharma Vs. UOI (1997(3) SCT, 341) and in the case of Satbir Singh Vs. State of Haryana, 2000(2) SCT 54.

5. In the counter reply filed on behalf of the respondents, it has been stated that applicants No. 1 to 43 belong to GE (South) Mamun, applicants No. 44 to 54 belong to GE (North) Mamun and applicant No. 55 belong to GE Palampur. They were appointed on Muster Roll during

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1985-86. They were appointed on regular service during May 1987 and 1988 in clear terms and conditions. The case of the applicants has no parity with the employees of the Cantten Store Department as the rules of CSD are not applicable to the industrial workers of MES.

6. It is further stated that para No. 9 of MACP Scheme (Annexure A/8 with the OA) clearly stipulates that "Regular Service" for the purposes of the MACPS shall commence from the date of joining of a post in direct entry grade on regular basis either on direct recruitment basis or on absorption or on absorption/re-employment basis. Service rendered on ad hoc/contract basis before regular appointment shall not be taken into reckoning. Hon'ble Punjab & Haryana High Court in judgement dated 18th July, 2011 in CWP No. 5781/2011 filed by UOI & Ors. Vs. CAT Chandigarh & Ors. (Annexure R-1 herewith) has also held that for the purpose of seniority, promotion or some other benefits, the service rendered on work charge basis, ad hoc basis or daily rate basis could not be counted. In identical controversy claim for counting seniority of casual service has been rejected by this Tribunal (Annexure R-2) and as such the applicants are not entitled to any relief.

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7. Arguments advanced by the learned counsel for the parties were heard when they reiterated the content of the OA and the written statement respectively.

8. We have given our careful consideration to the matter. Since learned counsel for the applicants has mainly placed reliance on the judgement of the CAT Bombay Bench in OA No. 193/2011 decided on 12.9.2011, it would be helpful to consider the plea of the applicants in that case and the observations of the Bench while deciding the matter. The applicant in OA No. 193/2011 was initially appointed as LDC on daily rated basis w.e.f. 6.1.1983 after being sponsored by the Employment Exchange. His services were regularized w.e.f. 1.3.1989 and it appears that before regularizing around 400 daily rated casual LDCs, the respondents sought the concurrence of the appropriate authority to seek exemption as regards the selection of applicants through Staff Selection Commission. The applicants were subject to examination/tests before they were formally regularized in continuation of their earlier casual service on daily rated basis. It has also been mentioned in para 9.4 of the order that "there is no dispute that the service, which the applicants pray for counting for the purpose of grant of benefits under the ACP Scheme, is rendered by each of the applicants in

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the same grade, although on ad hoc basis before their formal regularization". The other case cited is OA No. 448/JK/2013 decided on 17.9.2013 which also relates to LDCs in the CSD.

9. In the present case, the applicants were appointed on muster roll during 1985/86, they were appointed on regular basis during May, 1987-88 and they got the regular pay scale only after they were appointed as such in May, 1987/88. Moreover, the applicants are not LDCs, but they are industrial workers of MES. Hence, the facts and circumstances in OA No. 193 of 2011 decided by the CAT Bombay Bench on 12.9.2011 are materially different from the case of the applicants and hence distinguishable on facts.

10. It is also seen that para 4 of the Annexure II titled "Conditions for grant of benefits under the ACP Scheme" circulated vide OM No. 35034/1/97-Estt(D) dated 9.8.1999 (Annexure A-7) reads as follows:-

"4. The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfillment of prescribed conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc. this would have consequential effect on the second upgradation which would also get deferred accordingly."

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Para 9 of Annexure-I of the MACPS (Annexure A/8) reads as follows:-

“9. ‘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 ad hoc/contract basis from regular appointment on pre-appointment training shall not be taken into reckoning.....”

These instructions have not been impugned in the present OA.

11. The Jurisdictional High Court has considered the cases of casual industrial workers of the MES while deciding CWP No. 5781/CAT/2011 on 18.7.2011 wherein it has been held as follows:-

“3. Having heard learned counsel for the parties at length and perusing the paper book we are of the considered view that the Tribunal has gravely erred in coming to the conclusion that the applicant-respondent Nos. 2 to 14 are entitled to the benefit of counting the period of service rendered by them as a Casual Industrial Workers from 1985 to 1988. The issue as noticed in the opening para of this judgment is no longer res integra. A similar issue came up for consideration of Hon'ble the Supreme Court in the case of Punjab State Electricity Board and others v. Jagjiwan Ram and others, others, (2009)3 SCC 661, wherein their Lordships' in para 21 has held as under:

“21. For the reasons mentioned above, we hold that the respondents were not entitled to the benefit of time bound promotional scales/ promotional increments on a date prior to completion of 9/16/23 years' regular service and the High Court committed serious error by directing the appellants to give them benefit of the scheme by counting their work charged service.”

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4. It is obvious that for the purposes of seniority, promotion or some other benefits, the service rendered on work-charge basis, ad hoc basis or daily rate basis could not be counted. However, this principle would not be attracted in a case where the consideration proceeds on different plane i.e. when the question of pension comes. Therefore, the impugned order dated 15.3.2010 (P-4) passed by the Tribunal is unsustainable in the eyes of law and liable to be set aside.”

This judgement was upheld by the Apex Court in SLP (C) No. 29609 of 2011 titled Arjan Singh & Ors. Vs. UOI decided on 3.1.2012.

12. In view of the above discussion, the claim of the applicants for counting the period spent by them on daily wage basis for ACP and MACP benefits is not maintainable and the OA is rejected. No costs.

**(RAJWANT SANDHU)
MEMBER(A)**

**(SANJEEV KAUSHIK)
MEMBER(J)**

Dated: 9th March, 2015.

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