

**Central Administrative Tribunal
Principal Bench**

OA No. 230/2014

Order reserved on: 05.01.2017
Pronounced on: 14.02.2017

Hon'ble Mr. V. N. Gaur, Member (A)
Hon'ble Mr. Brahm Avtar Agrawal, Member (J)

D.K.Gupta (Storekeeper-cum-Clerk
R/o Sunder Nagar,
Behind KPR, Jai Singh Pura,
Mathura.

- Applicant

(By Advocate: Mr. M.K. Bhardwaj)

Versus

UOI & Ors. through

1. The Secretary,
Ministry of Textile,
Udyog Bhawan, New Delhi.
2. The Development Commissioner (Handicrafts),
Govt. of India,
Ministry of Textile,
West Block No.7, R.K.Puram,
New Delhi-110066.

- Respondents

(By Advocate: Ms. Anupama Bansal)

ORDER

Hon'ble Mr. V.N. Gaur, Member (A)

The applicant who is a Store Keeper-cum-Clerk in the office of Development Commissioner (Handicrafts), Government of India, Ministry of Textile (respondent no.2) has filed this OA with a prayer to grant him second financial upgradation under Assured Career

Progression (ACP) Scheme/Modified Assured Career Progression (MACP) Scheme after counting his service during his appointment against temporary post from 13.10.1978 to 29.06.1985. The respondents have granted him second financial upgradation in the scale of Rs.5000-8000 vide order dated 15.01.2010 w.e.f. 01.09.2008 when the MACP Scheme was introduced. Case of the applicant is that he was appointed against a temporary post of Store Keeper-cum-Clerk on 13.10.1978. His services were regularised vide order dated 21.01.1987 w.e.f. 29.06.1985. The respondents are counting his service for the purpose of granting upgradations under ACP and MACP Scheme w.e.f. 29.06.1985 while the claim of the applicant is that his services should be counted with effect from the date of his original appointment, i.e., 13.10.1978. The applicant had earlier approached this Tribunal through OA No.409/2013 which was disposed of vide order dated 01.02.2013 noting that the representations of the three applicants (applicant in the present OA was one of them) had not been considered and decided by the competent authority and that the one similarly situated applicant, namely, Sh. Phool Singh, who had approached the Tribunal in OA No.183/2011 had been given the benefit of his temporary service. The respondents were directed to consider the representations of the applicants taking into consideration the fact that the orders of the Tribunal had been implemented in the case of Sh. Phool Singh by granting him the

relief. The respondents have passed an order on 11.11.2013 (impugned) rejecting the claim of the applicant.

2. Learned counsel for the applicant submitted that the respondents have distinguished the case of the applicant from that of Sh. Phool Singh stating that the latter was initially appointed on temporary basis to the post of Store Keeper-cum-Clerk from 16.12.1978 whereas the applicant had been appointed to the post of Store Keeper-cum-Accounts Clerk purely on ad hoc basis w.e.f. 13.10.1978. Thus, the applicant cannot claim parity with the case of Sh. Phool Singh. Learned counsel referred to the appointment orders of the applicant and Sh. Phool Singh which are similarly worded and do not indicate that the applicant was appointed on ad hoc basis. He also referred to the seniority list of Storekeepers annexed to the rejoinder filed by the applicant that shows that the applicant was placed at Sl. no.3 and the date of entry in the Government service was 13.10.1978 while Sh. Phool Singh was placed at Sl. No.7, his date of entry in Government service being 16.12.1978. Attention was also drawn to the orders of regularisation of the applicant and Sh. Phool Singh to emphasize on the fact that both were similarly worded and that the officials mentioned in that order were working on ad hoc basis. But the claim of the applicant despite being senior to Sh. Phool Singh was rejected. Learned counsel relied on the order of Mumbai Bench of this Tribunal in **Suresh Kumar and another vs. Secretary,**

Ministry of Shipping and others, decided on 29.11.2010. He also referred to the judgment of Hon'ble Supreme Court in **Inder Pal Yadav vs. Union of India**, 1985 (2) SCC 648, wherein it was held that relief granted by Court is to be given to other similarly situated employees without forcing them to go to Court for similar benefits.

3. Learned counsel for the respondents vehemently argued that the applicant being an ad hoc employee till his regularisation in 1985 cannot be given the benefit of that service for the purpose of ACP/MACP Scheme. She referred to the order of regularisation of the applicant which has been filed as Annexure-A dated 21.01.1987 to support his claim that the officials being regularised by that order were working on ad hoc basis till that date. She also referred to the DOP&T clarification in the form of FAQs on MACP Scheme which stated that ad hoc appointment would not be counted to qualifying service for MACP Scheme. Only continuous regular service is counted. Learned counsel also referred to the appointment order of the applicant to argue that his appointment was on a temporary/ad hoc basis. Learned counsel also stated that the applicant should have challenged the order dated 21.01.1987 if he felt that his appointment was not on ad hoc basis in 1978.

4. We have heard the learned counsel for the parties and perused the record. This Tribunal by order dated 01.02.2013 had directed the respondents to consider the case of the applicant in terms of the

order dated 14.01.2011 in OA No.183/2011 in respect of Sh. Phool Singh. It is undisputed that in respect of Sh. Phool Singh second ACP has been granted w.e.f. 16.12.2002 and third MACP w.e.f. 16.12.2008 by counting his service from the date of his temporary appointment on 16.12.1978. The only ground for rejection of the claim of the applicant in the impugned order dated 14.01.2011 is that the applicant was initially appointed to the post of Storekeeper-cum-Clerk purely on ad hoc basis w.e.f. 13.10.1978 while Sh. Phool Singh was initially appointed to the post of Storekeeper-cum-Accounts Clerk on temporary basis w.e.f. 16.12.1978. Thus, the distinction sought to be made by the respondents is only on the fact of temporary vs. ad hoc basis. The first para of the appointment order of Sh. Phool Singh filed by the applicant with his rejoinder (page 114) reads as follows:

“Shri Phool Singh is hereby offered the post of Store Keeper-cum-Clerk in the scale of Rs.260-400/- in the Central Officer/Training Centre, Scheme for Training Centres in Art Metal Craft, Moradabad under the All India Handicrafts Board, Ministry of Industry. The post is temporary under 'Plan Scheme' and his services are liable to be terminated at any time without notice and without any reason being assigned. The appointment will be subject to the production of a certificate of physical fitness from the authorised medical authority and verification of his character and antecedents as per rules.”

5. The appointment order of the applicant is reproduced below:

“Shri Dhirendra Kumar Gupta has been appointed against the temporary post of Store Keeper-cum-Clerk in the Scheme for training centre in Artmotal Crafts, All India Handicrafts Board, Ramnagar, in the pay scale of Rs.260-400/- w.e.f. the forenoon of 13-10-78.

Shri Dhirendra Kumar Gupta will draw his pay at the minimum of the scale of pay plus usual allowances as admissible under the rules at his place of posting.”

6. The comparison of these two orders would show that nowhere in these orders there is a mention of the word ad hoc. Even the appointments have not been categorised as temporary, only the post against which appointment has been made has been mentioned as temporary. The appointment on a temporary post has to be treated as temporary even if there is no specific mention of it. It can be seen these appointment orders do not show any difference in the nature of appointment of the applicant and Sh. Phool Singh. If at all it can be considered significant, the appointment of Sh Phool Singh was “*liable to be terminated at any time without notice and without any reason being assigned*” while there was no such stipulation in the order of the applicant. Thus there is no basis for treating the appointment of the applicant as ad-hoc. Respondents have placed reliance on the regularisation order of the applicant in the year 1987 that mentions that the officers being regularised in that order, including the applicant, were working on ad hoc basis till that date. The relevant part of that office order is reproduced below:

“No.DC(H)/4(2)/83-Mental/
Government of India,
Ministry of Textiles,
Office of the Development Commissioner (Handicrafts)

West Block No.VII, R.K. Puram,
New Delhi-110066

Dated : January, 1987.

O F F I C E O R D E R

The Development Commissioner for Handicrafts hereby appoints the under mentioned officials (who have been working up till now on adhoc basis), on regular basis w.e.f. the dates mentioned against the name of the individuals :-

S.NO.	NAME OF THE OFFICIAL	DESIGNATION & PAY SCALE	DATE OF APPOINTMENT ON TEMPORARY BASIS
X	X	X	X
24.	D.K. Gupta	Store Keeper-cum-Clerk (Rs.260-400)	29.6.1985

On appointment to these posts on temporary basis, they shall draw their pay as they have already been drawing on adhoc basis.

This issues with the approval of Development Commissioner (Handicrafts)."

7. The applicant has filed a copy of regularisation order of Sh. Phool Singh dated 07.01.1988 the relevant part of that order reads as follows:

Government of India,
Ministry of Textiles,
Office of the Development Commissioner (Handicrafts)

West Block No.VII, R.K. Puram,
New Delhi-110066

Dated : 7th January, 1988.

O F F I C E O R D E R

The Development Commissioner (Handicrafts) hereby appoints the under mentioned officials (who have been working up till now on ad-hoc basis), on regular basis w.e.f. the dates mentioned against the name of the individuals :-

S.NO.	NAME OF THE OFFICIAL	DESIGNATION & PAY SCALE	DATE OF APPOINTMENT ON TEMPORARY BASIS
X	X	X	X

9.	Phool Singh	Store Keeper-cum-Clerk (Rs.950-1500)	29.6.1985
----	-------------	---	-----------

On appointment to these posts on regular basis, they shall continue to draw their pay as they have already been drawing on ad-hoc basis.

This issues with the approval of Development Commissioner (Handicrafts)."

8. Again it can be seen that there is nothing to distinguish in the regularisation orders of the applicant and Sh. Phool Singh. On the other hand, in the common seniority list issued by the respondents on 23.04.2004 (filed with the rejoinder) shows that the applicant and Sh. Phool Singh were in the same cadre and same scale but the applicant was at Sl. No.3 while Sh. Phool Singh was at Sl. No.7 in the seniority list. We, therefore, do not find any reason that could justify the discrimination between the cases of the applicant and Sh. Phool Singh. The learned counsel for the respondents has argued that the applicant should have challenged the regularisation order in 1987 since that order which showed him as working on ad hoc basis till the date of the order. We do not find any force in this argument because the applicant had already approached this Tribunal in OA No.409/2013 and that was disposed of with a direction to the respondent to consider his claim on the lines of the case of Sh. Phool Singh. Apparently, the argument of laches was not raised at that time by the respondents and they are estopped from doing so at this stage. Further, the respondents have not questioned the instances of Sh. B.K. Chakraborty, Sh. A.K.

Mehrotra, Sh. K.C.Pandey and Sh. Ram Nayan, who have been granted the benefits of service prior to regularisation in terms of various orders of this Tribunal. We are, therefore, unable to find any reason as to why the applicant in the present OA should be treated differently.

9. In the light of the discussion in the preceding paras and for the reasons stated, the order dated 11.11.2013 (impugned) is quashed and respondents are directed to grant benefits of ACP/MACP to the applicant by counting his service w.e.f. 13.10.1978 when he was appointed as Store Keeper-cum-Clerk against a temporary post. OA is allowed. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(V.N. Gaur)
Member (A)

14th February, 2017

‘sd’