

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2624 OF 2011

New Delhi, this the 20th day of January, 2017

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

AND

HON'BLE SHRI K.N.SHRIVASTAVA, ADMINISTRATIVE MEMBER

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Raj Kunwar,
s/o Sh.Sunder Lal,
R/o C-53 G.No.4,, Yudhisthir Gali,
Mohan Puri,
Maujpur,
Delhi

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Applicant

(By Advocate: Mr.U.C.Shrivastava)

Vs.

1. The Chief Secretary,
Govt. of NCT of Delhi
Secretariat,
New Delhi.
2. The Delhi Jal Board,
through its Chairman,
Delhi Jal Board,
Govt. of NCT of Delhi,
Delhi.
3. The Member(Administration),
Delhi Jal Board, GNCT of Delhi,
Varunalaya Complex Phase II,
Karol Bagh,
New Delhi

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Respondents

(By Advocate: Mr.Karunesh Tondon)

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ORDER

Per Raj Vir Sharma, Member(J):

The brief facts of the applicant's case are that after complying with the required formalities laid down in the relevant rules and instructions, the

Delhi Water Supply & Sewage Disposal Undertaking had engaged him as Work Assistant on muster roll basis in June 1978. The designation of Work Assistant was changed to Pump Driver in the year 1981. In the year 1983, though he qualified the recruitment test for appointment to the post of Junior Engineer and was placed at sl.no.83 of the merit list, he could not be appointed due to non-availability of vacancy. In consideration of his services as Work Assistant/Pump Driver on muster roll from June 1978 to December 1991, the Delhi Water Supply & Sewage Disposal Undertaking regularized his service in the post of Fitter-IIInd Class with effect from 20.1.1992. As he was not granted financial upgradations under the ACP and MACP Schemes and his requests fell on deaf ears, the applicant made a representation dated 28.12.2010(Annexure A/2) requesting respondent no.3 to grant him financial upgradations under the ACP and MACP Schemes and in the light of the decision of the Honøble Supreme Court in **Union of India Vs. M.Mathevenan**, 2006(6) SCC 87. There being no response from the respondents, the applicant filed the present O.A. on 19.7.2011 seeking the following reliefs:

- õ(a) Directing the respondents to place the relevant records pertaining to the present OA before their Lordships for the proper adjudication in the matter, in the interest of justice.
- (b) Directing the respondents to consider and finalize the case of the applicant for extension of the benefits of the ACP Scheme in terms of the law laid down by the Honøble Tribunal in case of Skariah Thomas Vs. Union of India & Anr., OA No.85/2006 decided in April, 2007 followed in OA No.954/2008 in case of A Marcus Clarie & Ors Vs. OIC records & Ors decided on 23.07.2008 and in case of All India Defence Civilian Clerks

Association of AOC Records Office & Anr. in OA No.2089/2008 by the CAT, Principal Bench, New Delhi.

- (c) Allowing the OA of the applicant with all other consequential benefits and costs.
- (d) Any other fit and proper relief may also be granted to the applicant.ö

1.1 It has been contended by the applicant that as his initial appointment as Work Assistant on muster roll was made by the respondents in June 1978 after following the required formalities under the relevant rules and instructions and his service was regularized from January 1992 by the respondent-authorities, and as the respondent-authorities informed him that his service from June 1978 to December 1991 would be regularized for the purpose of pension, he is entitled to be granted financial upgradations under ACP Scheme on completion of 12 years and 24 years of service from the date of his appointment as Work Assistant on muster roll in accordance with the decision of the Madras Bench of the Tribunal in **Skariah Thomas Vs. Union of India & Anr.**, OA No.85 of 2006.

2. Resisting the O.A., the respondents have filed a counter reply. It has been stated by the respondents that the applicant was engaged as Work Assistant on Muster Roll in June 1978 in the contingencies of work without undergoing any selection procedure. The applicant was subsequently regularized/appointed for the first time as a Fitter IInd Class with effect from 20.1.1992, vide offer/letter of appointment dated 19.1.1998. The applicant was given 1st financial upgradation under the ACP Scheme with effect from 20.1.2004 on his having completed 12 years of regular service in the post of

Fitter 2nd Class with effect from 20.1.1992, vide order dated 19.4.2011. It has been contended by the respondents that the ACP Scheme does not provide for counting the service of the applicant as Work Assistant on muster roll for the purpose of granting him financial upgradation under the said Scheme. It has also been contended by the respondents that the decisions cited by the applicant are not applicable to his case.

3. In his rejoinder reply, the applicant has more or less reiterated the same averments and contentions as in his O.A.

4. We have heard Mr.U.Shrivastava, the learned counsel appearing for the applicant, and Mr.Karunesh Tandon, the learned counsel appearing for the respondents.

5. The Assured Career Progression Scheme, circulated vide DoP&T O.M. dated 9.8.1999, stipulates the benefit of financial upgradation under the Scheme on the basis of regular service of an employee. Paragraph 3.2 of the O.M. dated 9.8.1999(ibid) stipulates that “Regular Service” for the purpose of the ACP Scheme shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant Recruitment/Service Rules. The subsequent O.M dated 10.2.2002 issued some clarifications on the subject. Clarification No.11 was on the point of eligibility or otherwise of counting of ad hoc service for this purpose. The relevant extract is as hereunder:

	Point of Doubt	Clarification
11	In the case of an employee appointed on ad hoc basis	No. In terms of para 3.2 of the Office Memo dt August 9, 1999 (ACPS), only

	and who is subsequently regularized, the ad hoc service is counted towards increment. Whether the ad hoc service may be counted for the ACPS also?	regular service which counts for the purpose of regular promotion in terms of relevant Recruitment/Service Rules shall count for the purpose of upgradation under ACPS.
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In view of the above, the applicant's service as Work Assistant on muster roll from June 1978 to 19.1.1992 would not count for the purpose of financial upgradation under the ACP Scheme.

6. On a perusal of the records, it is found that only after the respondents issued office order dated 19.4.2011 (Annexure R/1) granting first financial upgradation under the ACP Scheme to the applicant with effect from 20.01.2004, i.e., on his completion of 12 years of regular service in the post of Fitter 2nd Class, the present O.A. was filed by the applicant on 19.7.2011.

7. The applicant has claimed 1st and 2nd financial upgradations under the ACP Scheme on completion of 12/24 years of service from the date of his engagement as Work Assistant on muster roll in June 1978 solely on the basis of the decisions in **Union of India Vs. M.Mathevenan** (supra), **Skariah Thomas Vs. Union of India & Anr.** (supra), **A. Marcus Clarie & Ors Vs. OIC Records & Ors**, OA No.954/2008, decided by the Madras Bench on 23.07.2008, and **All India Defence Civilian Clerks Association of AOC Records Office & Anr.** OA No.2089/2008, decided by the Principal Bench on 1.5.2009.

8. Thus, it has to be seen as to whether or not the applicant is similarly placed as applicants in **Union of India Vs. M.Mathevenan**

(supra), **Skariah Thomas Vs. Union of India & Anr.** (supra), **A. Marcus Clarie & Ors Vs. OIC Records & Ors** (supra), and **All India Defence Civilian Clerks Association of AOC Records Office & Anr.**(supra).

9. In **Union of India Vs. M.Mathevenan** (supra), the applicant was selected for recruitment to the cadre of Postal Assistant on 28.12.1981 and was appointed as Postal Assistant on daily wage basis. He underwent necessary training and was placed in Reserve Training Pool (RTP). In August 1982, he volunteered for enrolment in the Army Postal Services and upon his selection, an order was passed by His Excellency the President of India appointing him as Warrant Officer on the establishment of regular army w.e.f. 30.9.1983. Thereafter, he was appointed as Postal Assistant on regular basis from 18.7.1989 and transferred to Cuddalore Postal Division where he joined on 6.8.1991. His claim for granting him placement in the next higher grade under the Time Bound Promotion Scheme on completion of sixteen years of service starting from 30.9.1983 was turned down by the departmental authorities. The Madras Bench of the Tribunal held that his services ought to have been considered from 30.9.1983 and since he had completed sixteen years regular service in 1999, he was entitled to the benefit of the TBOP Scheme. The writ petition and the appeal preferred by the Department were dismissed by the Honøble High Court of Madras and the Honøble Supreme Court.

10. In **Skariah Thomas Vs. Union of India & Anr.** (supra), the applicant was appointed as LDC (in lieu of Combatant) w.e.f. 28.5.1987 and

absorbed in the regular establishment w.e.f. 28.5.1989. As his services as LDC (in lieu of Combatant) w.e.f. 28.5.1987 were not taken into account by the Department for granting him first financial upgradation under the ACP Scheme, he approached the Madras Bench of the Tribunal. The Tribunal observed that if no fresh order was issued by the Department for bringing the applicant into regular establishment w.e.f. 28.5.1989 and if his services as LDC in lieu of Combatant w.e.f. 28.5.1987 counted for all purposes, it would be illegal on the part of the Department to ignore his services for the period from 28.5.1987 to 27.5.1989 for the purpose of granting him first financial upgradation under the ACP Scheme. In support of its conclusion, the Tribunal followed **Union of India Vs. M.Mathevenan** (supra) and allowed the claim of the applicant to reckon his services as LDC in lieu of Combatant w.e.f. 28.5.1987 for the purpose of first financial upgradation under the ACP Scheme. The writ petition and SLP filed by the Department against the Tribunal's order were dismissed by the Hon'ble Madras High Court and Hon'ble Apex Court respectively.

11. In **A. Marcus Clarie & Ors Vs. OIC Records & Ors**, OA No.954/2008 (supra) and in **All India Defence Civilian Clerks Association of AOC Records Office & Anr.** (supra) the Tribunal found that the applicants were similarly placed as the respondent in **Union of India Vs. M.Mathevenan** (supra). Accordingly, the Tribunal directed the respondents to count the services of the applicants from the date(s) of their joining as LDCs in lieu of Combatant in various

Army Establishments/Units for the purpose of granting financial upgradation under the ACP Scheme.

12. The applicant has not produced before this Tribunal any material to show that after complying with the required formalities under the relevant rules and instructions, the respondents had initially appointed him as Work Assistant on muster roll in June 1978. The respondents have specifically rebutted the statement made by the applicant that he was appointed as Work Assistant on muster roll in June 1978 by the respondents after complying with the required formalities under the relevant rules and instructions. The respondents have stated that the applicant was engaged as Work Assistant on muster roll in June 1978 in the contingencies of work without undergoing any selection procedure. At the time of regularization of his service in the post of Fitter 2nd Class with effect from 20.1.1992, a letter of appointment dated 19.1.1998 was issued to the applicant, and the applicant accepted the terms and conditions contained in the said letter of appointment. Thus, the applicant in the present case cannot be said to be similarly placed as applicants in **Union of India Vs. M.Mathevenan** (supra), **Skariah Thomas Vs. Union of India & Anr.** (supra), **A. Marcus Clarie & Ors Vs. OIC Records & Ors** (supra) and **All India Defence Civilian Clerks Association of AOC Records Office & Anr.**(supra). In none of these decisions, it has been held that service of an employee on ad hoc/contract/muster roll basis will count for the purpose of granting him/her financial upgradations under the TBOP Scheme/ACP Scheme. Therefore,

the claim of the applicant for being granted 1st and 2nd financial upgradations under the ACP Scheme on completion of 12/24 years of service from the date of his engagement as Work Assistant on muster roll in June 1978 is without any substance.

13. In the light of what has been discussed above, we do not find any merit in the O.A. The O.A, being devoid of merit, is dismissed. No costs.

(K.N.SHRIVASTAVA)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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