

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

O.A. No.3595/2013  
M.A. No.2724/2013

Order reserved on: 16.01.2017  
Order pronounced on: 06.02.2017.

**Hon'ble Mr. Raj Vir Sharma, Member (J)**  
**Hon'ble Mr. K. N. Shrivastava, Member (A)**

1. Mrs.Krishan Kanta Sharma  
W/o J.M.Sharma  
R/o 222, Dhruv Apartment,  
I.P.Extension, Delhi-92.
2. Mrs.Usha Bajaj  
W/o Shri N.N.Bajaj  
R/o C-202, Pandav Nagar,  
Delhi-92.
3. Mrs. Indu Arora  
W/o Shri A.K.Arora  
R/o A-115, Dayanand Colony,  
Lajpat Nagar, New Delhi-24.
4. Mrs. Prem Lata  
W/o Shri Pramod Kumar,  
R/o 16/303, Sangam Vihar,  
New Delhi-62.
5. Mrs.Swaran Lata  
W/o Shri Devki Nandan,  
R/o H.No.1900, Gali No.54,  
L Block, Badarpur, New Delhi.

-Applicants

(By Advocate: Mrs. Sumedha Sharma)

Versus

1. East Delhi Municipal Corporation  
Through its Commissioner,  
Udyog Sadan, Patparganj Industrial Area,  
Delhi-92.
2. South Delhi Municipal Corporation,  
Through its Commissioner,  
Dr. Shyama Prasad Mukherji Civic Centre,

JLN Marg, New Delhi-110002.

3. Director, (South) Community Service Department,  
Municipal Corporation of Delhi  
Dr. Shyama Prasad Mukherjee Civic Centre,  
Jawahar Lal Nehru Marg,  
Delhi-110002.
4. The Director,  
Community Service Department,  
East Delhi Municipal Corporation of Delhi  
Udyog Sadan, Patparganj Industrial Area,  
Delhi-110092.

-Respondents

(By Advocate: Sh. K.M. Singh)

### **ORDER**

**Mr. K.N. Shrivastava, Member (A):**

MA No.2724/2013 for joining together in single Application under Rule 4 (5) (a) of the Central Administrative Tribunal (Procedure) Rules, 1987 is allowed.

2. The applicants, through the medium of this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985, have prayed for the following main reliefs:

“a) Hon’ble Tribunal may be pleased to quash impugned order dt. 12/07/2013

b) The respondents may be directed to grant second ACP to the applicants as per the supportive decisions of Hon’ble SC of India, Hon’ble High Court as well CAT as per rule and law cited in above OA with all consequential benefits of arrears of pay, backwages, increments, seniority etc.”

3. The brief facts of the case are as under:

3.1 The applicants joined the erstwhile Municipal Corporation of Delhi (MCD) as Community Workers (Part Time) between the years 1971 to 1981. They were regularised as Community Workers vide MCD order dated 03.08.1988. The

applicants no.1, 3, 4 & 5 were regularised w.e.f. 01.04.1987 whereas applicant no.2 was regularised w.e.f. 13.01.1994.

3.2 The main prayer of the applicants is to count their service as Community Workers (Part Time) for the purpose of grant of MACP benefits to them.

3.3 The Community Services Department Part-time Workers Union and another had moved CWP No.2655/1987 before the Hon'ble High Court of Delhi seeking regularisation of their services which was disposed of by the Hon'ble High Court of Delhi vide order dated 02.04.1992 (Annexure A-4) with the following direction to the respondent – MCD:

“I, therefore, direct the respondents to fill up such posts and accommodate the petitioners as Community employees on regular basis in order of their seniority and subject to their being found eligible in terms of Regulations as framed.”

3.4 The MCD had challenged the Annexure A-4 order of the Hon'ble High Court in SLP No.10853/1992 before the Hon'ble Supreme Court, which was dismissed on 12.10.1992. The order of the Hon'ble Apex Court reads as under:

“We have heard the learned counsel for the parties. We have been taken through the judgment of the High Court. The High Court's judgment is crystal clear and there is no infirmity in the same. Special leave petition is dismissed.”

3.5 The present applicants had approached this Tribunal in TA No.1377/2009 seeking grant of ACP benefits to them which came to be disposed of by the Tribunal vide order dated 11.06.2010 (Annexure A-7) with the following direction to the respondent – MCD:

“13. Therefore, the OA is disposed of with a direction to the respondents to decide the representations filed by the applicants strictly in terms of the ACP Scheme keeping in view our observations and the observations of the Hon’ble High Court Delhi referred in para no.8 above in mind and to pass appropriate orders within a period of two months from the date of receipt of a copy of this order.”

3.6 In compliance with the Annexure A-7 order dated 11.06.2010, the respondent – MCD issued Office Order no.805/CSD/HQ/2010 dated 03.11.2010 which reads as under:

“The case of the petitioners was considered in the light of above directions of the Hon’ble Court. During the period no regular post of Community Worker was available in the department. These Community Workers were engaged on part-time basis (duty period 14/7 of normal working hours a day proportionately). Subsequently on availability of regular post petitioners were regularised as mentioned in the above said table. As per ACP Scheme as given in Para no.3.1 only regular employees are eligible for benefit under ACP Scheme.

Smt. Krishan Kanta Sharma at Sl. No.1 was engaged as part time community worker (duty period-4/7 of normal working hours a day proportionately) on temporary basis on 18.02.1980. She was regularized as Community Workers w.e.f. 01.04.1997 and on attaining the age of superannuation she retired from Mpl. Services on 30<sup>th</sup> April, 2006. She had completed only 9 years regular service as Community Workers and as such she was not eligible for the benefit of ACP Scheme, in the light of rules/guidelines issued by the Government of India OM No.35034/1/97-Estt(D) dated 09.08.1999.

Smt. Usha Bajaj at Sl.No.2 was engaged as part time community worker (duty period -4/7 of normal working hours a day proportionately) on temporary basis on 18.06.1979. She was regularized as Community worker w.e.f. 13.01.1994. on attaining the age of superannuation she retired from Mpl. Services on 30<sup>th</sup> September, 2006 after completion of 12 years regular service as Community Workers. As such she possessed the requisite qualifying service for being eligible to be considered to grant the benefit of ACP Scheme in January, 2006 and therefore, she was given the benefit of ACP Scheme.

Ms. Indu Arora at Sl. No.3 was engaged as part time community worker (duty period -4/7 of normal working hours a day proportionately) on temporary basis on 16.05.1981. She was regularized as Community worker w.e.f. 01.04.1997. She is still working as Community Worker and became entitled for 1<sup>st</sup> upgradation under ACP Scheme in April, 2009 as per

recommendation of Vth Pay Commission. However, the recommendation of the VIth CPC in respect of MACP (Modified Assured Career Progression Scheme) which become operational w.e.f. 01.09.2008 are still to be implemented is the MCD and he case for MACP will be considered as and when the same are implemented in the MCD.

Ms. Prem Lata at Sl. No.4 was engaged as part time community worker (duty period -4/7 of normal working hours a day proportionately) on temporary basis on 27.06.1980. She was regularized as Community worker w.e.f. 01.04.1997. She is still working as Community Worker and became entitled for 1<sup>st</sup> upgradation under ACP Scheme in April, 2009 as per recommendation of Vth Pay Commission. However, the recommendation of the VIth CPC in respect of MACP (Modified Assured Career Progression Scheme) which become operational w.e.f. 01.09.2008 are still to be implemented in the MCD and her case for MACP will be considered as and when the same are implemented in the MCD.

Ms. Swarn Lata at Sl. No.5 was engaged as part time community worker (duty period -4/7 of normal working hours a day proportionately) on temporary basis on 02.06.1980. She was regularized as Community Workers w.e.f. 01.04.1997. She is still working as Community Worker and became entitled for 1<sup>st</sup> upgradation under ACP Scheme in April, 2009 as per recommendation of the VIth CPC in respect of MACP (Modified Assured Career Progression Scheme) which become operational w.e.f. 01.09.2008 are still to be implemented in the MCD and her case for MACP will be considered as and when the same are implemented in the MCD.

Thus the representations of the petitioners stand disposed as above.

This has the approval of Competent Authority.”

3.7 Aggrieved by the order dated 03.11.2010 of the MCD, these applicants approached this Tribunal in OA No.4239/2010 (Annexure A-2) which came to be disposed of vide order dated 15.11.2011. The operative part of the order reads as under:

“19. ....Respondents are directed to examine the claim of applicants for second ACP, keeping in view the position so far emerged i.e.:-

(i) In the case of Community Service Department (Part-time) Workers vs. Municipal Corporation of Delhi, Honble High Court declared the Community Workers (Part-time) entitled to

some pay scale as available to regular permanent employees on regular basis by the respondents corporation.

(ii) In the case of Ms. Urmil Chopra (supra), Honble High Court viewed that there was no impediment in treating the applicant as regular employees both on the basis of her qualification and availability of vacancies.

(iii) In the case of Krishan Kant Sharma and Ors. Vs. MCD, Honble High Court viewed that the service rendered by applicants herein as Community worker (part-time) was to be counted as qualifying service for calculating pension and gratuity payable to them.

(iv) In para 7, 8, 11 of the order dated 11.06.2010 passed in TA No.1377/2009, this Tribunal had recorded a finding that the requirement of Community Workers (part-time) is of permanent and regular in nature as the recruitment to said post is regulated in terms of a specific set of regulations framed in the manner in which recruitment regulations for the post of Community Worker was framed .

(v) The fact that the qualifying service of a Govt. servant for pension commence from the date he takes charge of the post to which he is first appointed either substantively or in officiating or temporary capacity and once the part time service rendered by the applicants is declared as qualifying service for the purpose of pension, it need to be treated as service rendered in the manner indicated in Rule 13 of CCS Pension Rules.

20. The aforementioned exercises shall be completed by the respondents within a period of three months from the date of issue of a copy of present order. Needless to say that the decision, so taken, by the respondents would be communicated to the applicants by way of a detailed, reasoned and speaking order. OA stands disposed of. No costs.”

3.8 In compliance with the Annexure A-2 order of the Tribunal the respondents have passed the impugned Annexure A-1 speaking order dated 12.07.2013 rejecting the claim of the applicants for grant of MACP/ACP benefits to them. Stand taken in the impugned order is that the period of service rendered as part time workers cannot be counted for the purpose of grant of MACP/ACP benefits. The operative part of the order reads as under:

“Therefore, having considered all the facts of the case in detail, and having gone through all the judgments as mentioned above, and the orders and directions passed by the Hon’ble CAT, and in accordance with the ratio laid down by the High Court in the writ petition titled MCD vs. Raj Bala Mann & Ors., her case for grant of financial benefits under ACP Scheme cannot be accepted and hence their representation is rejected.”

4. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The applicants thereafter filed their rejoinder. With the completion of the pleadings the case was taken up for hearing the arguments. Mrs. Sumedha Sharma, learned counsel for the applicants and Sh. K.M.Singh, learned counsel for the respondents were heard on 16.01.2017.

5. The main contention of the learned counsel for the applicants is that the Hon’ble High Court of Delhi in **Smt. Urmila Chopra v. The Commissioner & Anr.**, [WP (C) No.148/1997, decided on 16.11.2005] has held as under:

“14. In this case the petitioner was appointed to the post of part-time Community Worker, which is admittedly a sanctioned regular employment within the MCD. The nomenclature is that of a part-time worker; however, the entitlement of the incumbent to the post is undeniable. The petitioner continued in that position for 13 long years; later she was appointed/promoted to the next/higher post of Community Worker, and continued to discharge duties on full time basis. The post of Community Worker can be filled either by promotion from amongst part-time Community Workers, or by direct recruitment. There is no denial by the MCD that the petitioner was eligible to hold the post of Community Worker and did in fact discharge duties in that post till she superannuated from the service.”

5.1 Mrs. Sumedha Sharma said that the same view has been taken by the Hon’ble High Court even in the case of **Mrs. Krishna Kanta Sharma & Ors. v. Municipal Corporation of**

**Delhi & Anr.**, [W.P. (C) No.4009/2007] and thus the Hon'ble High Court has settled that the period of service rendered as Community Workers (Part Time) is to be considered for grant of service benefits including bound financial upgradation under MACP. Mrs. Sharma argued that the applicants in the instant OA are identically placed and as such are entitled to the same reliefs that has been granted to the petitioners in **Urmila Chopra** (supra) and **Krishna Kant Sharma** (supra).

6. Per contra, Shri K.M. Singh, learned counsel for the respondents submitted that the judgment in the case of **Urmila Chopra** (supra) is a judgment in *personam* and not in *rem*. He further submitted that Urmila Chopra could demonstrate that she was engaged for full time work even when she was working as a Community Worker (Part Time), which is not the case with the present applicants.

6.1 Shri Singh, proceeding with his arguments, submitted that this Hon'ble Tribunal in OA No.1463/2012 together with six other OAs (**Nirmala w/o Chad Singh & Anr. V. The Commissioner, North Municipal Corporation of Delhi**) vide order dated 22.07.2014 has observed as under:

“ 3. In the said case (Urmil Chopra (supra), the view taken by the Hon'ble High Court was that the petitioner was entitled to be treated as regular employee and in the backdrop of such view a direction was given to the respondents to give her pension. In the present cases before us, no prayer has been made by the applicants for treating them as regular employees with effect from the date of their appointment on part time

basis. In the absence of specific prayer for treating the part time employment as regular employment, no attempt was made by learned counsel for applicants to treat the part time service as regular service.

14. In the circumstances, being bound by the view taken in paragraph 11 of the judgment of the Hon'ble High Court in W.P. (C) No.1461/2012 (with connected petitions) dated 12.3.2013 whereby five Orders passed by the Tribunal, including the four Orders passed in the present Original Applications following the judgment in Urmil Chopra (supra) were reversed, we are of the considered view that the part time service rendered by the applicants cannot be counted determining the pensionary benefits. The prayers made in the Original Applications are accordingly declined. However, the present Order would not come in the way of the applicants to workout their right separately in terms of the Office Memorandum No.5.12(I)/EV/68 dated 14.5.1968 referred to in paragraph 7 of the judgment in Urmil Chopra's case (supra) and the observations made in paragraphs 14 to 16 of the said judgment."

6.2 Further, the Hon'ble High Court of Delhi vide its judgment dated 12.03.2013 in a bunch of five Writ Petitions (Civil) No.1461, 2441, 2476, 2628 and 2638 all of 2012 (**MCD & Ors. v. Mrs. Raj Bala Mann & Anr.**) has held as under:

"10. Now, the decision of the learned Single Judge of this Court in Urmil Chopra's case is on the fact that Urmil Chopra successfully established that though ostensibly appointed as a Community Worker (Part- Time), as a matter of fact she worked full time. It was on said proof of fact that relief was granted to Urmil Chopra.

11. Being a question of fact, which has not been decided by the Tribunal, we dispose of all the writ petitions setting aside the impugned order dated August 19, 2011, September 26, 2011 as also November 15, 2011 and simultaneously remand the matters to the Tribunal for adjudicating whether the Original Applicants before the Tribunal had performed Full Time duties. The reason for said factual adjudication is that admittedly all of them were appointed as Community Workers (Part-Time). Unless they can show that they had actually worked full time, as was shown by Urmil Chopra, relief as prayed by them cannot be granted."

6.3 Shri Singh vehemently argued that the judgment in **Urmila Chopra** (supra) has been distinguished in the aforementioned judgements of this Tribunal and Hon'ble High of Delhi and as such it is now settled that the period of part time working cannot be counted for the grant of financial upgradation under ACP/MACP. He accordingly pleaded for dismissal of the OA.

7. We have given our thoughtful consideration to the arguments put-forth by the learned counsel for the parties and have also perused the pleadings and the documents annexed thereto. The recruitment regulations for the post of Community Worker (Part Time) of MCD lay down norms for appointment of Community Workers (Part Time) directly. Unlike regular recruitments in Municipal Bodies as well as in the Government where the minimum age prescribed is 21 years, in the case of Community Workers (Part Time), the minimum age is 18 years. This itself indicates that the Community Workers (Part Time) are different from regular employees. The claim of the applicants is primarily based on the judgment of the Hon'ble High Court in **Urmila Chopra** (supra). The question of counting of service rendered by a person as a Community Worker (Part Time) for service benefits post regularization as full time Community Worker has been adjudicated by this Tribunal in **Nirmala w/o Chad Singh & Anr.** (supra) and **MCD**

**& Ors. v. Mrs. Raj Bala Mann & Anr.** (supra). In both the judgments, the judgment in **Urmila Chopra** (supra) has been distinguished and finally it has been held that the period of service rendered as Community Worker (Part Time) cannot be counted as regular service for granting pensionary and other service benefits. In **Urmila Chopra** (supra), the petitioner therein could demonstrate that she was engaged for full time even though she was appointed on part time basis and consequently the Hon'ble High Court granted the relief prayed for. The applicants in this OA have failed to demonstrate their full time engagement as could be seen from the impugned orders of the respondents. Hence, we are of the view that the judgment in **Urmila Chopra** (supra) is not applicable to the present applicants.

8. The engagement of the applicants as Community Workers (Part Time) is something like engagement of Gramin Dak Sevak (GDS) earlier called as Extra Departmental Agents (EDAs) in Postal Department. For the appointment of GDSs and to govern their service conditions, the Postal Department has prescribed specific Rules called 'Department of Posts Gramin Dak Sevak (Conduct & Employment) Rules, 2001.' The GDSs are entitled for selection to the post of Postal Assistant (regular post) through LDCE and 50% quota is reserved for them. Similarly, as per the regulations for the Community Workers,

50% of the posts are to be filled up by promotion from amongst the Community Workers (Part Time) with five years of regular service in the grade. The issue of counting of period of service as GDS of persons who later got promoted to the regular post of Postal Assistant in the Postal Department has been adjudicated by this Tribunal in several OAs. The consistent view taken by the Tribunal is that the period of service rendered as GDS cannot be counted towards pensionary and other service benefits as GDS is not a regular post. The same analogy applies to the case of Community Workers (Part Time) as well. Thus, we are of the clear views that the period of service as Community Workers (Part Time) cannot be counted for any service benefits, including financial upgradation under MACP.

9. In the conspectus of the discussions in the foregoing paragraphs, the OA is found devoid of any merit and accordingly it is dismissed.

10. No order as to costs.

**(K.N. Shrivastava)**  
**Member (A)**

**(Raj Vir Sharma)**  
**Member (J)**

‘San.’