

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A No. 3743/2013

New Delhi, this the 16th day of November, 2017

HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MS. NITA CHOWDHURY, MEMBER (A)

Praveen Swami,
S/o Sh. P. N. Swami,
Aged about 43 years,
R/o B-8, Phase-II, Vijay Vihar,
New Delhi-85
and working as
Stenographer (Hindi) under
RPFC (North), Wazirpur, Delhi.

.. Applicant

(By Advocate : Shri Yogesh Sharma)

Versus

1. Union of India through
Secretary, M/o Labour & Employment,
Shram Shakti Bhawan,
Rafi Marg, New Delhi-1.
 2. Employees Provident Fund Organisation,
Through Central Provident Fund Commissioner,
Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place, New Delhi.
 3. Secretary,
Department of Personnel & Training,
M/o Personnel, Public Grievances & Pensions,
North Block, New Delhi.
 4. Regional Provident Fund Commissioner (North)
EPFO, 28, Community Centre,
Wazirpur Industrial Area,
Delhi-52.
- .. Respondents

(By Advocate : Shri Satpal Singh)

ORDER (ORAL)**By Mr. V. Ajay Kumar, Member (J)**

The applicant, who is presently working as Stenographer (Hindi) under the 2nd respondent – Employees Provident Fund Organisation (in short, EPFO), filed the O.A. seeking a direction to the respondents to consider his past service rendered by him as Stenographer (Hindi) in Rashtriya Mahila Kosh, Ministry of Women and Child Development, Govt. of India, New Delhi, before his appointment in the 2nd respondent – EPFO by way of transfer for the purpose of granting financial upgradation under the MACP Scheme.

2. The admitted facts are that the applicant was appointed as Stenographer (Hindi) on 14.04.1997 in Rashtriya Mahila Kosh, Ministry of Women and Child Development, Govt. of India, New Delhi. Thereafter, he was appointed to the post of Stenographer (Hindi) on transfer to the 2nd respondent – EPFO at its Headquarters of the Ministry of Labour and Employment, Govt. of India on 03.01.2007. He has been working under the 2nd respondent as such till date.

3. The applicant's request for considering of his past service, i.e. w.e.f. 14.04.1997 to 02.01.2007, for granting of ACP/MACP benefit was rejected by the respondents vide impugned Annexure-A, dated

08.05.2013, by stating that Rashtriya Mahila Kosh, wherein the applicant was working before his appointment in the EPFO, is an autonomous body under the Ministry of Women and Child Development and, hence, the said service will not be counted for grant of financial upgradation under the MACP Scheme.

4. Heard Shri Yogesh Sharma, learned counsel for the applicant and Shri Satpal Singh, learned counsel appearing for the respondents and perused the pleadings on record.

5. Shri Yogesh Sharma, learned counsel appearing for the applicant, while drawing our attention to the Office Memorandum dated 19.05.2009 (Annexure:D), whereunder the Modified Assured Career Progression Scheme (MACPS) for the Central Civil Government employees was introduced, more particularly to para 10 and 24 of the Annexure-I to the said memorandum and also to Office Memorandum dated 01.11.2010 (Annexure:E), submits that the service rendered by the applicant in the Rashtriya Mahila Kosh, Ministry of Women and Child Development, Govt. of India, New Delhi has to be counted for the purpose of granting financial benefits under the MACP Scheme.

6. Paras 10 and 24 of the O.M. dated 19.05.2009, referred to above, read as under:

“10. Past service rendered by a Government employee in a State Government/statutory body/Autonomous body/Public Sector organisation, before appointment in the Government shall not be counted towards Regular Service.

xxx xxx xxx xxx

24. In case of an employee after getting promotion/ACP seeks unilateral transfer on a lower post or lower scale, he will be entitled only for second and third financial upgradations on completion of 20/30 years of regular service under the MACPS, as the case may be, from the date of his initial appointment to the post in the new organization.”

7. The relevant para 2 of O.M. dated 01.11.2010 reads as under:

“2. During the joint committee meeting it was pointed out by the Staff Side that the word 'new organization' of the last line of para 24 of Annexure-1 of MACPS dated 19.05.2009 was not in consonance with the spirit of the Scheme. The issue has been examined and it is clarified that in case of transfer 'including unilateral transfer on request, regular service' rendered in previous organisation/office shall be counted alongwith the regular service in the new organisation/office for the purposes of getting financial upgradations under the MACPS. However, financial upgradation under the MACPS shall be allowed in the immediate next higher grade pay in the hierarchy of revised pay bands as given in CCS (Revised Pay) Rules, 2008. Para 24 of MACPS stands amended to this extent.”

8. On the other hand, the learned counsel for the respondents, while not disputing the existence of the above clauses under the Scheme, however, submits that the applicant was appointed vide the Memorandum dated 29.12.2006 under the 2nd respondent – EPFO and his appointment is subject to certain terms and conditions and one of the conditions of his appointment was that the applicant will not be entitled to any past service benefits for

determining seniority and leave account of service rendered by him in Rashtriya Mahila Kosh, New Delhi, however subject to the conditions prescribed in CCS (Pension) Rules, 1972 and instructions issued thereunder, the service in Rashtriya Mahila Kosh will be considered for calculation of pensionary benefits.

9. The learned counsel further submits that the appointment of the applicant in the 2nd respondent – EPFO is governed by the said terms and conditions and having accepted the same only, he joined in the 2nd respondent – EPFO. In terms of the said conditions, the respondents will consider the past service rendered by the applicant in Rashtriya Mahila Kosh for the purpose of pensionary benefits, however, the said period cannot be counted for the purpose of granting financial benefits under MACP Scheme. The learned counsel further submits that on the face of such condition, the O.A. itself is not maintainable and deserves to be dismissed in limine.

10. The submission of the learned counsel for the respondents that the appointment of the applicant in the 2nd respondent – EPFO is an appointment but not a transfer, is unsustainable on the face of the appointment order itself, as the same clearly indicates that the appointment is by way of transfer and not by way of any fresh appointment.

11. It is not in dispute that the 2nd respondent – EPFO is adopting the MACP Scheme and granting to all its employees various financial benefits provided under the Scheme, however, subject to the terms and conditions of the said Scheme. Once the said Scheme is applicable to all the employees of the respondents, the Scheme is applicable to the applicant also, as he is the employee of the 2nd respondent – EPFO since 03.01.2007. Once the respondents are implementing the MACP Scheme as per the provisions contained in O.M. dated 19.05.2009 as clarified by OM dated 01.11.2010, all the employees of EPFO are entitled for consideration of their past service rendered under their previous employers, if any, and if falls within the terms of the said Scheme. Hence, the condition 2(v) of the appointment order dated 29.12.2006 of the applicant with regard to determining seniority and leave account shall not bar the applicant from getting the benefit of consideration of his case for granting of financial benefits under the Scheme.

12. It is also not in dispute that Rashtriya Mahila Kosh is an autonomous organisation of the Government of India and if any of the employees of Rashtriya Mahila Kosh joined in the EPFO, they are entitled for granting of financial benefits as the said Organisation does not belong to any State Government or its autonomous bodies. It is also brought to our notice that even in respect of the employees of State Govts./Statutory

Bodies/Autonomous Bodies/Public Sector Undertaking Organisations covered under para 10 of the Scheme were also brought into the fold of the MACP Scheme, since para 10 itself was struck down by the courts and, therefore, denying the benefit of consideration of the service rendered by the applicant in Rashtriya Mahila Kosh for granting of financial benefits under MACP Scheme is unsustainable.

13. In the circumstances and for the reasons mentioned therein, the O.A. is allowed and the respondents shall consider the past service of the applicant under Rashtriya Mahila Kosh for consideration of granting of financial benefits under the MACP Scheme and to pass consequential orders within 60 days from the date of receipt of a copy of this order. However, the applicant is not entitled to any interest on the arrears, in the circumstances. No order as to costs.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

/Jyoti/