

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA No.200/2014

**Reserved On:11.09.2018
Pronounced On:20.09.2018**

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. A.K. Bishnoi, Member (A)

Adarsh Kumar Saxena (Storekeeper-cum-Clerk)
R/o H.No.15, Preet Vihar Colony,
Khushal Pur, Majhola,
Muradabad, U.P. ...Applicant

(By Advocate : Mrs. Priyanka Bhardwaj for Shri M.K. Bhardwaj)

Versus

Union of India & 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. Aishwarya Dobhal for Shri Hilal Haider)

ORDER

By Hon'ble Mr. V. Ajay Kumar, Member (J)

Aggrieved with the Annexure A-1 order dated 11.11.2013 of the respondents whereunder they have refused to count the temporary/ad hoc service rendered by the applicant prior to his regular appointment for the purpose of counting the requisite number of years for granting the ACP/MACP benefits, the applicant, a retired Store Keeper-cum-Accounts Clerk, filed the instant OA.

2. Brief facts of the case are that the applicant was appointed vide Memo dated 06.12.1978 as Store Keeper-cum-Clerk in the scale of Rs.260-400 in the Central Office/Training Centre, Scheme for Training Centres in Art Metal Craft, Moradabad, on temporary basis. Accordingly, the applicant joined as such on 15.12.1978. The respondents, vide Office Order dated 07.01.1988, appointed the applicant on regular basis as Store Keeper-cum-Clerk in the pay scale of Rs.950-1500 w.e.f. 29.06.1985, along with certain others. The applicant was granted the 1st financial upgradation under the ACP Scheme w.e.f. 09.08.1999, after completion of 12 years regular service, vide order dated 07.09.2000.

3. OA No. 409/2013 filed by the applicant along with 2 others seeking granting of 2nd ACP was disposed of by this Tribunal on 01.02.2013, as under:-

“4. In view of this, we note that the respondents should be given a chance to consider the said representations, as per law and try to redress the grievance of the applicants before the OA is entertained. Accordingly, we direct the respondent No.2 to consider those representations, as per law and pass appropriate order, trying to redress the grievance of the applicants within a period of three months from the date of receipt of a certified copy of this order, failing which the applicants would be at liberty to approach this Tribunal by way of appropriate proceedings, as per law.

5. In this connection, it is also noted from the pleadings that one similarly situated applicant, namely, Shri Phool Singh, approached this Tribunal by way of OA No.183/2011, which was disposed of by similar order dated 14.1.2011. It is noted that the said order has since been implemented and Shri Phool Singh, who is similarly situated, as the applicants, has been granted the relief. The respondents shall duly take this fact into consideration while considering and deciding the representations of the applicants in question.

6. The OA, accordingly, stands disposed of with the aforesaid directions and liberty”.

4. In compliance of the said orders of this Tribunal, the respondents passed the impugned Annexure A-1 order dated 11.11.2013, however, rejecting the claim of the applicant.

5. Heard Mrs. Priyanka Bhardwaj for Shri M.K. Bhardwaj, learned counsel for the applicant and Ms. Aishwarya Dobhal for Shri Hilal Haider, learned counsel for the respondents and perused the pleadings on record.

6. Mrs. Priyanka Bhardwaj, learned counsel appearing for the applicant submits that one Shri Phool Singh, who was also appointed as a Store Keeper-cum-Clerk initially on temporary basis with effect from 16.12.1978 and was later appointed on regular basis along with the applicant in the same proceedings, i.e. vide Office Order dated 07.01.1988, filed OA No.183/2011 and this Tribunal disposed of the said OA on 14.01.2011 directing the respondents to take a decision on the representations of the said Shri Phool Singh and in compliance of the said orders of this Tribunal, the respondents vide order dated 08.05.2012, granted him the 2nd ACP and 3rd MACP after duly counting the service rendered by him on temporary basis. One Shri D.K. Gupta, who was also one of the applicants along with the present applicant in OA No.409/2013, filed OA No.230/2014 before this Tribunal when the respondents by passing a speaking order dated 11.11.2013 rejected his claim. A Coordinate Bench of this Tribunal, by its order dated 14.02.2017, allowed the said OA by quashing an identical

rejection order and by directing to grant benefits of ACP/MACP to said Shri D.K. Gupta by counting his service w.e.f. 13.10.1978, i.e., when he was appointed as Store Keeper-cum-Clerk on temporary basis.

7. The learned counsel for the applicant further submits that the respondents have counted the temporary service rendered by Shri Phool Singh on their own and also counted the similar period in respect of Shri D.K. Gupta, following the orders of this Tribunal in OA No.230/2014, and since both the said persons were appointed as Store Keeper-cum-Clerk on temporary basis like the present applicant and also that they were appointed on regular basis along with the present applicant through common proceedings dated 07.01.1988 and hence the applicant is also entitled for the same benefit of counting of the service rendered as temporary Store Keeper-cum-Clerk prior to his regular appointment for the purpose of granting ACP/MACP benefits.

8. Ms. Aishwarya Dobhal, learned counsel appearing for the respondents submits that Shri Phool Singh was initially appointed on temporary basis before he was appointed on regular basis but whereas the present applicant was appointed on ad hoc basis prior to his regular appointment and in view of the said difference, Shri Phool Singh's case cannot be treated as identical to that of the applicant. The learned counsel further submits that in respect of Shri D.K. Gupta, the respondents are contemplating to challenge

the orders of this Tribunal in OA No.230/2014 dated 14.02.2017. The learned counsel also submits that, in any event, any service other than the regular service, cannot be considered for the purpose of granting financial upgradations under ACP/MACP benefits, as the said Schemes itself prescribes for counting the regular service only.

9. At the outset, we cannot accept the contention of the respondents that the case of Phool Singh is different to that of the present applicant, as this Tribunal rejected an identical contention made by the respondents while allowing D.K. Gupta's OA. A careful examination of the orders of initial appointment of Phool Singh, D.K. Gupta vis-à-vis the present applicant when they were appointed on temporary basis, clearly shows that all of them were identically placed insofar as their initial appointment and the subsequent regular appointment which was done in a common proceedings dated 07.01.1988.

10. Now we examine the question raised in the present OA, i.e., whether the service rendered by an employee on casual/temporary/daily wage/ad hoc basis prior to the date of his regular appointment can be counted for the purpose of calculation of the required number of years for granting the financial benefits under the ACP/MACP Schemes. The said question is not a res integra and a Division Bench of the Hon'ble Calcutta High Court in WPCT No.396/2014 dated 06.07.2015 titled as Mr. Babu Yohanan

Vs. The Union of India and Others (2015 SCC OnLine Cal 2009), after considering various decisions of this Tribunal and also of other decisions of the same High Court including the decision in Sunity Chakraborty Vs. Union of India WPCT 497/2013 dated 11.03.2014 and other decisions of the Hon'ble Apex Court, categorically held that the ad hoc service rendered prior to the regular appointment cannot be taken into consideration for grant of benefit under ACP Scheme. Further, a Coordinate Bench of this Tribunal in OA No.424/2014 order dated 15.11.2017 in Om Pal Singh Malik and Others Vs. Vice Chairman, Delhi Development Authority, New Delhi and Others, also taken a similar view and that the ACP/MACP Schemes themselves envisaged that the benefits thereunder shall be granted to the employees on consideration of their regular service and that any casual/contractual/temporary/adhoc service shall not be reckoned for the purpose of counting the required periods under the ACP/MACP Schemes.

11. Granting of ACP/MACP to one Shri Phool Singh by the respondents by counting the service rendered by him on temporary/ad hoc basis prior to his regular appointment as Store Keeper-cum-Clerk, is against the ACP/MACP Schemes itself and also in violation of law, and hence cannot be a ground for granting of identical benefit to the applicant as there can be no negative equality (**See State of Bihar Vs. Upendra Narayan Singh (2009) 5 SCC 69**). The decision in D.K. Gupta (OA No.230/2014 supra) is

also not helpful to the applicant in view of the decision of the Hon'ble Calcutta High Court in Babu Yohanan (supra).

12. In the circumstances and for the aforesaid reasons, the OA is dismissed being devoid of any merit. No costs.

(A.K. Bishnoi)
Member(A)

(V. Ajay Kumar)
Member (J)

RKS