

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
Order reserved on: 06.09.2018

ORIGINAL APPLICATION NO. 060/ 00585/2017

Chandigarh, this the 1st day of October, 2018

...
**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)**

- ...
1. Siloni Dhawan, aged 48 years, w/o Sh. Rajinder Dhawan, working as Data Entry Operators, Grade-B in the office of Directorate of Census Operations, Union Territory, Chandigarh (Group-B).
 2. Kamal Preet, aged 47 years, w/o Sh. Roop Singh, working as Data Entry Operators, Grade-B in the office of Directorate of Census Operations, Union Territory, Chandigarh.
 3. Neera Sharma, aged 48 years, w/o Sh. Rajneesh Sharma, working as Data Entry Operators, Grade-B in the office of Directorate of Census Operations, Union Territory, Chandigarh.
 4. Sushma Rani, aged 46 years, w/o Sh. Darshan Goel, working as Data Entry Operators, Grade-B in the office of Directorate of Census Operations, Union Territory, Chandigarh.
 5. Anuradha, aged 49 years, w/o Sh. Gurmeet Singh, working as Data Entry Operators, Grade-B in the office of Directorate of Census Operations, Union Territory, Chandigarh.

....APPLICANTS

(By Advocate: Shri R. K. Sharma)

VERSUS

1. Union of India, through Secretary to Government of India, Ministry of Home Affairs, North Block, Central Secretariat, New Delhi, 11001.
2. Registrar General & Census Commissioner of India, 2-A, Man Singh Road, New Delhi 110011.

3. Directorate, Census Operations, Union Territory, Plot No. 2-B, Sector 19-A, Jangnana Bhawan, Madhya Marg, Chandigarh 160019.

....RESPONDENTS

(By Advocate: Shri B.B. Sharma)

ORDER

AJANTA DAYALAN, MEMBER (A)

The present Original Application (O.A.) has been filed jointly by five applicants feeling aggrieved by order dated 3.5.2017 (Annexure A-1) conveyed on 11.5.2017 rejecting their claim for regularization from the initial dates of their appointment on adhoc basis, with all consequential benefits including grant of ACP/MACP.

2. The facts of the case are largely not in dispute. The applicants were initially appointed as Data Entry Operator Grade-B. They joined duty on different dates – applicant 1 to 3 on 14.5.1993, applicant 4 on 17.5.1993 and applicant 5 on 21.4.1994. The appointment letter dated 7.5.1993 (Annexure A-2) for applicant 1 mentions that her appointment was purely temporary and on adhoc basis. Similar letters were issued for other applicants. Later, the applicants were granted temporary status w.e.f. 1.12.1997 vide order dated 8.1.1998 (Annexure A-3). They were confirmed on 21.7.2000 vide order dated 24.7.2000 (Annexure A-4).

3. On introduction of Modified Assured Career Progression Scheme, (MACP) all the applicants were granted 1st MACP w.e.f. 1.9.2008 vide office order dated 17.8.2010 by taking into account only their regular service w.e.f 1.12.1997. In case of another cadre of Assistant Compilers under the respondent department, services

have been regularized w.e.f. the date of their initial appointment itself, vide order dated 19.5.2015 (Annexure A-5). Further, the applicants have quoted the case of Lekh Raj vs Union of India & Ors. (O.A. No. 060/00585/2014), where this Tribunal on 10.4.2015 (Annexure A-6) has directed the respondents to decide the claim of the applicants for regularization of their services from the initial date of appointment on adhoc basis with all consequential benefits. According to the applicants, they are similarly situated, though they had not approached the Court, and so the benefit of regularization from initial date of their appointment should have been granted in their case as well.

4. The applicants represented to the respondent department on 13.5.2015 and issued reminders, but to no avail. Legal notice dated 30.9.2016 (Annexure A-7) was served, but there was no response. Thereafter, O.A. No. 060/00259/2017 was filed which was disposed of on 10.3.2017 with the direction to the respondents to consider and decide the representation/legal notice of the applicants and if the applicants were found entitled to the benefit, the same be released in their favour; otherwise a reasoned and speaking order be passed. The respondents, however, rejected their claim vide impugned order dated 3.5.2017 (Annexure A-1).

5. The case of the applicants is that they were considered and found eligible and suitable for the job and only thereafter were appointed on adhoc basis. Moreover, in case of Assistant Compilers, the respondent department has already granted this relief. In case of Lekh Raj also, the respondents are said to be

regularizing his adhoc service in view of orders passed by this Tribunal. (The applicants have, however, not produced a copy of these orders.) They have also quoted decisions rendered in other cases whereby similarly placed persons need to be granted the same benefit. They have also stated that even work- charge and casual service followed by regularization is being counted for GPF and pension. The applicants were on better footing as they were appointed against regular posts. They have also quoted the case of Veena Thakur Vs Union of India & Ors. (O.A.NO. 063/00151/2014) in which adhoc services have been regularized vide orders dated 17.7.2015, 25.8.2015 and 2.2.2016 (Annexure A-9, A-10 and A-11) in view of the order of this Tribunal. They have also quoted three other case laws in support of their contention. Hence, the applicants have stated that non grant of similar benefit to them is discriminatory and is violative of Articles 14 & 16 of the Constitution of India and that the benefit needs to be extended to them including grant of consequential benefits of ACP and MACP.

6. The respondents have opposed the prayer of the applicants. According to them, the cause of action, if any, arose in July 2000 when they were regularized w.e.f. 21.7.2000 (Annexure A-4). The applicants have chosen to sleep over their claim for almost 17 years and have not approached the Tribunal during this long period. The claim is, therefore, hopelessly time barred and not permissible under Section 21 of the Administrative Tribunals Act, 1985. Besides, no M.A. for condonation of delay has been filed. Any relief granted to them at this distance of time may upset settled

seniorities and may adversely affect persons not made party in the present O.A. Accordingly, the O.A. needs to be rejected even due to non-joinder of necessary parties. It is also pleaded that even the order of regularization has not been impugned by the applicants and as such no relief can be granted to them.

7. The respondents have further stated that Annexure A-1 is a detailed speaking order and is liable to be upheld. This order interalia brings out that the applicants belong to a different category. Their claim is barred by limitation and settled things cannot be unsettled at this stage. The applicants have not made any claim in 2000 when they were regularized. Further, DoPT has clarified that adhoc service does not count for regularization and that this is contrary to the Apex Court decision in the case of Dr. Arundhati A. Pargaonkar & another vs. State of Maharashtra, (AIR 1995 SC 962) whereby the Apex Court has held that continuous service by itself does not give right to claim of regularization. DoPT O.M. dated 29.10.1975 also clarified that adhoc appointments do not bestow any claim for regular appointment.

8. Further, the respondents have argued that the applicants are in a different cadre of Data Entry Operator whereas similarity is sought with Assistant Compilers which is an altogether different cadre. There is no parity with the cited case and the applicants cannot claim benefit under similarly placed persons, not being similarly placed.

9. The respondents have further pleaded that it is not judicious to revisit the closed chapter of appointment/regularization. This

may deprive the rights already conferred upon other employees till date senior to the applicants. The regular appointment also requires availability of posts, meeting eligibility criteria under the Rules as well as selection by designated recruitment agency at relevant point of time.

10. It is also stated by the respondents that various decisions quoted by the applicants are per incuriam in view of law settled to the contrary by the Apex Court and as such, no benefit is liable to be granted to them. The Hon'ble Supreme Court in Punjab State Electricity Board & Others vs. Jagiwan Ram and Others reported in (2009) 3 SCC 661 has held that 'the High Court committed serious error by directing the appellants to give them benefit of the scheme by counting their work charged service'. Hence, the claim of the applicants also needs to be rejected.

11. We have heard the learned counsel for the parties, have gone through the pleadings available on record and given our thoughtful consideration to the matter.

12. It is true that the cause of action for the applicants, if any, arose in July 2000 when orders of their regularization w.e.f. 21.7.2000 were issued. Even by applicants own admission, they have not challenged this order in any court or Tribunal earlier to filing of this O.A. This means a delay of almost 17 years. Section 21 of the Administrative Tribunals Act, 1985 is very clear and is worded in negative terms. If an application is not received within the prescribed time limit, the same cannot be admitted by the Tribunal. No explanation for such unusual delay is forth- coming in

the instant case. There is not even an application for condonation of delay by the applicants. In case of **Union of India and Ors. vs. M.K. Sarkar** (2010) 2 SCC 59, the Apex Court has held that even an order passed by the executive in compliance of a judgment by the court/tribunal does not extend the period of limitation or erase delay and laches which should be considered only with reference to original cause of action. Hence, the O.A. needs to be dismissed purely on this ground, being hopelessly time barred.

13. The applicants have not impugned order dated 8.1.1998 and order dated 24.7.2000 issued by the respondent department granting temporary status w.e.f. 1.12.1997 and confirming the applicants as Data Entry Operator Grade-B w.e.f. 21.7.2000. Unless these orders are challenged, no relief can be granted to the applicants as they are basically seeking ante-dating of their temporary status and confirmation. Hence on this technicality also, the O.A. is deficient and cannot be allowed.

14. Any ante-dating of their temporary status/confirmation to years 1993/1994 from year 2000 will clearly bestow seniority also and may adversely affect others who may have been appointed in or promoted to the cadre during these long years. As these persons have not been made parties, the O.A. is defective due to non-joinder of necessary parties. During the course of arguments in the case, a general statement was made by the counsel for the applicants that no persons would be adversely affected, However, no specific argument or concrete data has been provided in the O.A. or during the arguments to substantiate this contention of the applicants.

Any change in seniority will have All India effect not only in DEO Cadre but later in other cadres as well as this case will get quoted as precedent. Hence, the O.A. is defective for non-joinder of parties and liable to be dismissed on this ground.

15. Before discussing merit of the case, we observe that number of case laws have been quoted by the applicants in support of their contention or where similar relief has been granted. Most of these cases are of this Tribunal (other benches) and other High Courts. One case of Man Singh vs. State of Haryana 2008 (3) SCT 364 is of Apex Court. However, this case is general and is regarding disciplinary proceedings. It only states that the applicant deserves to be treated equally in the matter of departmental punishment and the respondents cannot be permitted to resort to selective treatment. This case is not directly applicable here except the plea of selective treatment which is dealt with in the preceding paragraphs relating to technical defects as well as in succeeding ones relating to merits of the case. In view of observations made therein, the plea of selective treatment does not hold in this case. Besides, the other case laws relating to grant of ACP/MACP after counting adhoc service are per incuriam being contrary to the law settled by the Apex Court as discussed below and hence no benefit is liable to be granted to the present applicants. In the case of Lekh Raj quoted by the applicants, by their own admission, they have not been able to place on record any order in support of their contention. Hence, it is not clear whether this order has been implemented. In any case, here this

Tribunal has only ordered the respondents to 'decide' the case of the applicants. Therefore, this case cannot be used to support applicants' case.

16. As regards the merits of the case, We also note that the main reason for the applicants coming to Court is to get the benefit of ACP and MACP. In this connection, it is important to note that both ACP and MACP Schemes are clear and provide grant of benefit based only on the length of regular service. In fact, it is interesting to note that while the applicants' star motive for this O.A. is to get the benefit of ACP and MACP Schemes, the schemes are nowhere quoted or attached by the applicants in the pleadings. But, the provisions of the both the Schemes are very clear and what to talk of adhoc service, even temporary service is not to be counted for benefits under these schemes. Be that as it may, there is no dispute about the fact that both ACP and MACP Schemes clearly provide for counting of only regular service for grant of benefit under them. Adhoc service is not counted for this purpose. This fact is not disputed by the applicants themselves. And hence they are now trying to go the other way to get this benefit by asking for ante-dating of their date of regularization to their initial date of appointment.

17. But merely to grant this benefit to the applicants, we cannot allow opening of a closed chapter at this belated stage and order regularization of their services when today there is no occasion or reason for such regularization. Even the fact that such benefit has been granted to one cadre does not justify grant of same benefit to

all other cadres – which will be the logical conclusion if this O.A. is allowed. On the other hand, there are reasons to doubt the correctness of the relief granted to Assistant Compilers. In any case, we are aware that besides Assistant Compilers, only isolated cadres- if at all- have been granted this benefit and the same has not been granted to other cadres. Besides, this will change settled position of seniority and promotions of persons already in service and not party to this O.A.

18. The Hon'ble Supreme Court has held in **Basawaraj and Another vs. Special Land Acquisition Officer** reported in (2013) 14 SCC 81 that any relief granted by an inadvertence or mistake cannot create a legal right to get the same relief. It is also a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decision made in other cases. If a wrong is committed in an earlier case, it cannot be perpetuated.

19. The whole case of the applicants is based on similar relief being granted to the cadre of Assistant Compilers under the respondent department itself. The applicants are claiming to be similarly situated and hence entitled to similar relief. The respondents have, however claimed that these are different cadres and hence they are not similarly situated. It is not in dispute that the cadre of applicants i.e. Data Entry Operator Grade-B and the cadre of Assistant Compilers where the relief has been granted are two different cadres. It is also obvious that each cadre is constituted based on the role and functions it is to discharge in the

scheme of governance. Each cadre is governed by its own rules. Accordingly, the Rules governing each cadre are different. Cadre strength and vacancy position of each cadre are also different and are varying from time to time. Hence, besides the role performed by the cadres, position of recruitment rules and vacancy position at different points of time has to be kept in mind while considering regularization of services. Therefore, to conclude that different cadre persons are similarly placed without going into all the above issues would be a simplification which may lead to unforeseen difficulties at a later time. It is also not denied that benefit of adhoc service to be counted as regular service has been granted only for one cadre and not for all other cadres in the same respondent department.

20. Even the Hon'ble Supreme Court has very clearly held that Courts should not interfere by ordering for regularization or even by ordering the Government to formulate a scheme for regularization.

21. We also observe that there is no denying the fact that the applicants have never approached the Court for the last 17 years and hence on this count also they are not similarly placed as others who approached the Court earlier and were granted relief. In case of **Rattam Chandra Samantha vs. Union of India** (1994 SCC L & S 184), the Hon'ble Supreme Court has held that the delay deprives the person of remedy available in law and a person who has lost his remedy by lapse of time loses his right itself.

22. In view of all above, we find no merit in the O.A., being hopelessly barred by limitation, being defective due to non-joinder of necessary parties and not impugning order of regularization dated 24.7.2000 and also being devoid of merit. No costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 1.10.2018

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