

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

No.O.A. 351/1/2016

Date of order :06.11.2017

Coram: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Ms. Jaya Das-Gupta, Administrative Member

Shri R.N. Roy, son of Late A.L. Roy, R/o New
Pahargaon, Port Blair, South Andaman,
Working as Assistant Engineer, Andaman
Public Works Department posted at Port
Blair, North Andaman Division, Port Blair

.....Applicant

- VERSUS -

1. The Union of India, service through
The Secretary, Ministry of Department of
Public Works, New Delhi-110001;
2. The Lt. Governor,
A&N Islands,
Port Blair-744101;
3. The Commissioner-cum-Secretary,
Andaman Public Works Department,
A&N Administration,
Port Blair-744101;
4. The Chief Engineer,
Andaman Public Works Department,
A&N Administration,
Port Blair-744101;
5. The Superintending Engineer,
Andaman Public Works Department,
A&N Administration,
Port Blair-744101

.....Respondents

For the applicant : Mr. P.C. Das, counsel
For the respondents : Mr. S.K. Ghosh, counsel



ORDER

Mrs. Manjula Das, Judicial Member

By this O.A. the applicant approached before this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 with the following reliefs:-

- "a) To pass an appropriate order directing upon the respondent authorities to regularize the above service of the present applicant as Junior Engineer from the date of his initial appointment i.e. with effect from 23.09.1982 on the same as was done in other cases based on decision of this Tribunal in O.A.No.199/AN/2008 and M.A. No.52/AN of 2008 and in accordance with the order of this Hon'ble Tribunal dated 30.09.2015 in O.A.No.70/AN of 2013 and to grant all consequential benefit including the benefit of 2nd Financial Upgradation under the ACP Scheme to the applicant;
- b) To declare that in light of the decision made by the 3rd Member Bench of this Hon'ble Tribunal vide order dated 30.09.2015 in O.A.No.79/AN of 2013 and in light of the order passed by this Hon'ble Apex Court in Sanjoy Pant's case the applicant being a non-local candidate is entitled to get the benefit of regularization to the post of Junior Engineer with effect from 23rd September, 1982 instead of 21st May, 1986 along with all consequential benefits including ACP and MACP;
- c) To pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice."

2. Brief facts of the case as narrated by the applicant are that after being selected he was initially appointed as a Junior Engineer on ad hoc basis being non-local candidate against the existing vacant post of Junior Engineer and joined in his services on 01.10.1982. His services were regularized w.e.f. 01.08.1985. He was promoted to the post of Assistant Engineer(Civil) vide order dated 14.12.1999.

3. Mr. P.C. Das, Id. Counsel for the applicant submits that similarly situated ad hoc appointees in the post of Junior Engineer under the same respondents approached before this Tribunal vide O.A.No199/AN/2008 with M.A.No.52/AN/2008 (Ashis Ghosh vs. Union of India & Ors.) and O.A.No.70/AN/2013(Bina Parmar alias Bina Baidya vs. Union of India & Ors.) with prayer for regularization of their services as Junior Engineer from the date of



initial appointment on ad hoc basis with consequential benefits. This Tribunal vide order dated 11.12.2009 disposed of the O.A.No.199/AN/2008 by directing the respondents to regularize the ad hoc services of the said applicant as Junior Engineer from the date of his initial appointment i.e. from 23.09.1982. Thereafter Shri Ashis Ghosh, Smt. Bina Parma alias Bina Vaidya and Sri Bijoy Krishna Mondal got benefit of their ad hoc service while awarding 1st and 2nd ACP. Mr. Das further submitted that similarly situated one Sri Bijoy Krishna Mondal who was appointed on ad hoc basis in the post of Junior Engineer under the same respondent got the benefit of ad hoc service for regularization as well as in awarding the 1st and 2nd ACP w.e.f. 09.08.1999 and 16.02.2008 respectively by counting the ad hoc period w.e.f. 07.02.1984. Thus the applicant stressed on the issue that by not giving the similar benefits the respondents have acted in a discriminatory, arbitrary way which is not at all permissible under the law.

According to Id. counsel, as per the decision of the Hon'ble Apex Court as well as the clarification of the DOPT in regard to the financial upgradation under ACP Scheme, the applicant is entitled to get the regularization of his ad hoc services as well as towards granting the financial upgradation. But unfortunately the case of the applicant was left out by the respondents.

5. Mr. Das has drawn our attention to order of the Third-Member Bench of this Tribunal in O.A.No.70/AN/2013 dated 30.09.2015 wherein it was held that :-

"10.....Wherefore, I am of the considered view that no more elaboration in this regard is required and the impugned speaking order has to be set aside and accordingly, it is set aside and direction is here given to the Respondent Authority to issue forthwith appropriate order treating the ad hoc service of the Applicant as regular one. The reference is answered accordingly.

11. *On balance, this OA is disposed of. No costs.*"



6. In the present case, we have noted that the respondent authorities despite being granted several time for filing reply remained unanswered for the last one year. However, Mr. S.K. Ghosh, Id. Counsel for the respondents is present.

On 21.01.2016 this Tribunal directed the respondents specifically to file reply by indicating as to why the applicant would not be entitled to the benefits as given by this Tribunal to one, Sri Ashis Ghosh, the applicant of O.A.No.199/AN/2008. Thereafter the matter was listed on 11.03.2016 when six weeks' time was granted to the respondents for filing reply. The matter was again listed on 08.11.2016 and further 4 weeks' time was granted to the respondents for filing reply. Thereafter, again the matter was listed on several occasions i.e. on 03.05.2017, 13.06.2017, 25.07.2017 respectively and finally on 06.11.2017. Despite of having several opportunities the respondents restrained themselves from filing their reply.

That being the position, this Bench has no other alternative but to proceed with the matter without having any written statement(reply) from the respondents.

7. It was submitted by Mr. S.K. Ghosh, Id. counsel for the respondents that the applicant is not entitled to 2nd ACP as he has not completed 24 years of service as on September, 2006 i.e. from the date of regularization of his service w.e.f. 01.08.1985.

8. We have considered the arguments advanced by the Id. Counsel for both the parties, perused the pleadings and materials placed before us.

9. The issues for consideration before us are as to:-



(i) Whether the applicant is exactly similarly situated with the applicants of O.A.No.199/AN/2008(Ashis Ghosh vs. Union of India & Ors.) and O.A.No.70/AN/2013(Bina Parmar @ Bina Vaidya vs. Union of India & Ors.);

(ii) Whether the applicant is entitled to get the similar benefits as extended to the applicants of O.A.No.199/AN/2008 and O.A.No.70/AN/2013 in regard to regularization of ad hoc period.

(iii) Whether the ad hoc services of the applicant w.e.f. the initial date of his appointment till the date of his regularization can be counted towards grant of 2nd financial upgradation under the ACP Scheme ;

10. Coming to a logical conclusion, we have in hand the case of the applicant,

Shri Ashis Ghosh (O.A.No.199/AN/2008), who served initially as Junior Engineer Engineer in APWD, Port Blair. In the said case, Mr. Ghosh was a non local candidate of Andaman who was initially appointed on 23.09.1982 on ad hoc basis in the post of Junior Engineer. His services were regularized by the authorities w.e.f. 01.08.1984 and he approached before this Tribunal for regularization of his ad hoc services from the period of his initial appointment i.e. 23.09.1982 to the date of regularization of his services i.e. 01.08.1984. This Tribunal vide order dated 11.12.2009 passed an order as hereunder:-

"11. Having considered the matter carefully we dispose of this O.A. with a direction to the respondent authorities to regularize the ad hoc service of the applicant as Junior Engineer from the date of his initial appointment from 23.9.82 on the same principle as was done in other cases based on the decision of the Tribunal referred to above. However, it is observed that settled seniority position of others need not be disturbed and reopened and the applicant be given only notional benefit at subsequent stages, if he is otherwise entitled to. However, the respondents shall consider his case for grant of 2nd financial upgradation under A.C.P. Scheme in accordance with rules. This decision be implemented within 3 months from the date of communication of this order.

12. With the above observations and directions, both the O.A. and M.A. are disposed of. There will be no order as to costs."



11. Similarly in the other case i.e. O.A.No.70/AN/2013, the applicant, Ms. Bina Parmar @ Bina Baidya also worked as ad hoc appointee who was initially appointed on 05.05.1987 being a non-local candidate. She was appointed on the post of Junior Engineer(Civil) under the department of APWD. In the said case, there was a difference of opinion between the two Members i.e. Judicial Member and Administrative Member and the Third-Member (Judicial) was appointed to resolve the issue. The Third-Member Bench after hearing the parties decided the matter vide order dated 30.09.2015 which is hereunder:-

"10.....Wherefore, I am of the considered view that no more elaboration in this regard is required and the impugned speaking order has to be set aside and accordingly, it is set aside and direction is here given to the Respondent Authority to issue forthwith appropriate order treating the ad hoc service of the Applicant as regular one. The reference is answered accordingly.

11. On balance, this OA is disposed of. No costs."

The matter went up to the Hon'ble High Court, Calcutta at Port Blair, Circuit Bench vide W.P.C.T.No.188/2016 wherein the Hon'ble High Court vide order dated 10.06.2016 dismissed the writ petition and directed the concerned authority to implement the order of this Tribunal. The Hon'ble High Court has passed order dated 10.06.2016 as hereunder:-

"We thus do not find any reason to come to a conclusion different from the majority view expressed by the Tribunal in the impugned order. We, thus, dismiss the writ petition and direct the concerned authority to implement the order of the Tribunal and extend the time for implementation of the order of the Tribunal by four weeks from the date of communication of this order."

12. The issue for regularization of the ad hoc period by counting the period of ad hoc services which travelled upto Hon'ble High Court has now been settled.
13. After careful exploration of the cases of the applicants in O.A.No.199/AN/2008 and O.A.No.70/AN/2013 and the present applicant, we



have reached to a finding that the present applicant's grievances are exactly similar to that of those applicants. Even the present applicant also served initially as Junior Engineer and thereafter promoted as Assistant Engineer under the same respondent authorities like those applicants. Thus it is crystal clear that the present applicant is similarly situated with the applicants, namely, Ashis Ghosh(O.A.No.199/AN/2008) and Bina Parmar alias Bina Vaidya(O.A.No.70/AN/2013). Thus the first point is decided in affirmative.

14. By taking abreast the issues as referred above we are of the view that if one employee is getting the benefit in similar circumstances, the other employee cannot be discriminated by not awarding the said benefit. The benefit so granted to the similarly situated employee cannot be denied to the present applicant.

In the case of *Inder Pal Yadav vs. Union of India reported in 1985(2)SCC-648* the Hon'ble Apex Court held that :-

"Relief granted by the court is to be given to other similarly situated employees without forcing them to go to court for similar benefits."

15. The regularization of ad hoc services in the circumstances like the case of the applicants in O.A.No.199/AN/2008 and O.A.No.70/AN/2013 has been well settled by a Third-Member Bench of this Tribunal as well as by the Hon'ble High Court at Calcutta.

16. In view of the ratio laid down by this Tribunal in O.A.No.199/AN/2008 and in O.A.No.70/AN/2013 as well as the decision of Hon'ble Apex Court in *Inder Pal Yadav(supra)*, we do not find any reason to take a divergent decision in the matter.. As such, we are of the view that the ad hoc period of applicant's service be regularized and counted towards grant of 2nd financial upgradation under the ACP Scheme: Accordingly, O.A. stands allowed. No order as to cost.



Needless to mention that the benefits extended to the applicants in O.A.No.199/AN/2008 and O.A.No.70/AN/2013 shall also be extended to the present applicant within a period of three months from the date of receipt of this order.



(JAYA DAS GUPTA)
Administrative Member
sb



(MANJULA DAS)
Judicial Member