CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.759/2011

Dated this the 09th day of June, 2017
CORAM:HON'BLE SHRI ARVIND J. ROHEE, MEMBER (J)
HON'BLE MS.B. BHAMATHI, MEMBER (A)

1. Indian Naval Employees' Union
having its office at: Rajgir Chambers,
7th Floor, Room No. 60,
Shahid Bhagatsingh Road,
Mumbai- 400023.
Through its Working President-
Tayyab Abdulla Darvesh, Aged 55 years
Presently working as Mate
under Respondent No. 4
and residing at Room No.330,
3/5, Andhra Association, S.M.D. Road,
Antop Hill, Wadala (E), Mumbai 400037.

2. Satish Kashiram Sawant,
Aged 58 years, presently working as
HSK-I under Respondent No. 4, and
Residing at 6/17, Modern Mill Compound.
Keshavrao Khade Road,
Jacob Circle, Mumbai 400011.

3. Joachim Peter Correia,
Aged 50 years, presently working as
HSK-I under Respondent No. 4, and
Residing at Matru-Chaya, Nandakhal,
Fatherwadi, Post Agashi,
District: Thane- 401 301.

4. Sooryakant Tanaji Kasekar,
Aged 49 years, presently working as
HSK-I under Respondent No. 4, and

Residing at A/402, Shreegan Co-operative
Housing society, Plot No. 6,
Opp. Cosmos High School, S.P.S. Road,
Bhandup(W), Mumbai 400078.

5. Ambaji Siddappa Pasare
Aged 47 years, presently working as
HSK-I under Respondent No. 4, and
Residing at Nanku Seth Chawl,
Room No. 18, T.J. Road,
Opp. Standard Mill, Sewri,
Mumbai 400015. **..Applicants**

(Applicants by Advocate Shri. A.I. Bhatkar)
Versus.

1. The Union of India, Through
Secretary to The Government of India,
Ministry of Defence, South Block,
New Delhi- 110001.

2. The Chief of Naval Staff,
Integrated Headquarters,
Ministry of Defence (Navy)
'C' Wing, Sena Bhavan,
New Delhi- 110011.

3. The Flag Officer Commanding-in-Chief
Headquarters, Western Naval Command,
Shahid Bhagatsingh Road,
Mumbai 400023.

4. The Admiral Superintendent,
Naval Dockyard, Lion Road,
Shahid Bhagatsingh Road,
Mumbai 400023. **..Respondents**

(Respondents by Advocate Shri. V.S. Masurkar.)
Reserved on :- 25.04.2017

Pronounced on :- 09.06.2017.

ORDER

Per:-Hon'ble Ms.B. Bhamathi, Member (A)

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

> *"(a) This Hon'ble Tribunal will be graciously pleased to direct the respondents to produce the various records pertaining to the issue involved in this case and after going through the same hold and declare that the Applicant No. 2 to 5 are holding posts on regular basis from the date of their initial appointment for the purpose of grant of financial upgradation under the ACP Scheme.*
>
> *(b) This Hon'ble Tribunal will be graciously pleased to hold and declare that the applicant No. 2 to 5 and other members of applicant No. 1, who are similarly and identically situated, are appointed on regular basis from the date of their initial appointments for the purpose of grant of financial upgradation.*
>
> *(c) This Hon'ble Tribunal will be graciously pleased to direct the respondents to grant first/ second financial upgradation under the ACP Scheme to the Applicants No. 2 to 5 and other members of Applicant No. 1 on the basis of their regular service from the*

date of their initial appointments.

(d) This Hon'ble Tribunal will be graciously pleased to direct the respondents to extend the benefit of counting of service from the date of initial appointment for the purpose of ACP to all similarly situated employees who have not been extended the same benefit till now.

(e) This Hon'ble Tribunal will be graciously pleased to direct the respondents to grant all consequential benefits including arrears of pay and allowances due and admissible to all.

(f) This Hon'ble Tribunal will be graciously pleased to pass such other and further orders as deemed fit in the facts and circumstances of the case.

(g) Cost of this application be awarded to the applicants."

2. The case of the applicant is that the Applicant No. 1 is a Union functioning under the respondents and representing various types of employees including industrial and non-industrial, ministerial etc. Applicant No. 2 to 5 are also members of the Union and are affected persons in respect of the grievances raised in this OA.

2.1. Applicants were initially appointed as skilled workers through Employment Exchange after due selection, as per RRs. Applicants fulfilled all the conditions prescribed in the RRs for appointment to the posts to which they were initially appointed. The applicants continued without any break against the existing regular vacancies.

2.2. Applicant No. 2 was appointed as a Skilled Worker on 13.10.1983 and was converted as a regular temporary employee w.e.f. 13.10.1983 and continued in the post uninterruptedly till he was appointed/ absorbed in regular vacancy from 22.02.1985.

2.3. Applicant No. 3 was appointed as a Skilled Worker on 13.10.1983 and was converted as a regular temporary employee w.e.f. 13.04.1983 and continued in the post uninterruptedly till he was appointed/ absorbed in regular vacancy from 02.04.1985.

2.4. Applicant No. 4 was appointed as a Skilled Worker on 14.10.1983 and was converted as a regular temporary employee w.e.f. 14.10.1983 and continued in the post uninterruptedly till he was appointed/ absorbed in regular vacancy from 22.02.1985.

2.5. Applicant No. 5 was appointed as a Skilled Worker on 07.06.1984 and was

converted as a regular temporary employee w.e.f. 07.06.1984 and continued in the post uninterruptedly till he was appointed/ absorbed in regular vacancy from 11.01.1985.

2.6. The applicants submit that similar is the situation as far as the other members of the Union are concerned.

2.7. The applicants submit that they have been granted all the benefits like annual increments, leave, pensionary benefits. LTC, etc and their service from the date of initial appointment has been treated as regular service for the purpose of everything except that of seniority. Applicants submit that this was done by the respondents on the basis of OM dated 24.11.1967 and OM dated 27.05.1980. According to the said OM past service rendered from the date of appointment by such of the casual non-industrial personnel, including those mentioned in para 1 of the OM who are converted as regular non-industrial employees, will be treated as having been rendered in the regular capacity. Hence, the respondents ought to have counted and/ or taken into account the service from the date of initial appointment for the purpose of granting benefits under ACP scheme.

2.8. It is evident that the grant of ACP i.e. financial upgradation was on personal basis and therefore neither amounted to functional/ regular promotion nor would it require creation of new posts. This was adopted by Government to remove stagnation in the various cadres.

2.9. However, respondents have not counted the service of the applicants from the date of their initial appointment in the grade. Instead the respondents are counting the service of the applicant from the date of their appointment/ absorption in regular vacancies.

2.10. A similar issue came up before the Ernakulam Bench of this Tribunal in ***OA No. 755/2000*** filed by All India Naval Clerks' Association ***decided on 20.09.2002***. After considering all the aspects of the matter, the Tribunal was pleased to declare that the applicants therein were entitled to ACP benefits on the basis of their regularization from the date of their initial appointment (including the service rendered on casual basis). The applicants submit that under para 11 of this judgment/ order, the Hon'ble Ernakulam Bench of this Tribunal has considered the effect of the Government of India MOD OM dated 24.11.1967 as also the judgment and

order dated 29.11.1990 of the Full Bench of this Tribunal in the case of ***A. Ramakrishna Nair & Ors. V/s. Union of India & Ors. (Full Bench Judgments pf CAT (1989-1991) Volume II, Page 375) in OA Nos. 434/1989 and 609/1989.***

2.11. Similar issues came up before this Tribunal, wherein directions were given to the respondents to count the service from the date of initial appointment for the purpose of ACP. The OAs are as follows:-

Sr. No.	**OA No.**	**Name of the Applicants**	**Date of decision**
1	692 of 2004	G.K. Moolya & Others	14/03/05
2	431 of 2005	V.N. Hatekar & Others	09/11/05
3	682 of 2005	T.K. Neelambaran & Others	06/09/06
4	53 of 2006	A.M. Shinde & Others	06/09/06
5	1 of 2006	A.M. Pawar & Others	14/08/06
6	420 of 2006	Indian Naval Employees' Union & Others	29/11/06
7	407 of 2006	N.M. Kadam & Others	05/12/06
8	352 of 2008	Surekha Arun Kunkulkar	23/06/09
9	532 of 2008	R.S. Panicker	09/10/09
10	375 of 2007	J.B. Fernandes & Others	31/01/11
11	07 of 2009	J.T. Joshi	31/01/11
12	224 of 2010	V.M. Arote & Others	20/10/11
13	373 of 2010	S.V. Rane & Others	20/10/11

2.12. Some of the aforesaid judgments

have already been implemented and some are being implemented by the respondents. The applicants submit that the issue involved in this OA is no more *res integra*.

2.13. **OA.420 of 2006 (supra)** was filed by petitioners who were Asst. Storekeeper on similar and identical issue i.e. regarding to counting of service from the date of initial appointment for grant of ACP benefits. This Tribunal was pleased to allow the said OA vide order dated 29.11.2006. The said order has already been implemented by the respondents vide order dated 09.07.2009 issued by R-2. Hence it was necessary for the respondents to extend the said benefits to all the other members of the Union, who are similarly situated.

2.14. Applicant-1 had filed several other OAs referred earlier before the Tribunal with a prayer to count their service from the date of initial appointment for the purpose of various benefits under the service. The said OAs were allowed with further direction to the respondents to extend the benefits to all the similarly situated employees. The respondents also took a decision to extend the benefits to the similarly situated employees and issued an OM dated 26.06.1995. The said

OM has been issued on the basis of the judgment/ order dated 24/25.08.1989 in ***OA Nos. 516 and 732 of 1988 in the case of N.R. Naik & Others V/s. Union of India & Others (1990(3) SLJ (CAT) Page 19 and on the basis of the judgment/ order in OA No. 306 of 1988.***

2.15. Applicant No.1 sent a letter dated 13.04.2011 to R-3 seeking financial upgradation to nearly 500 industrial/ non-industrial employees of the Command serving in various Units, who have been denied financial upgradation under ACP scheme from the date of initial appointment, although their appointments were through Employment Exchange and after due selection and after they fulfilled all the conditions prescribed under the RRs. They have been granted all the benefits like increment, leave, LTC, etc. except seniority. However, they have not been granted ACP benefits after counting their service from the date of initial appointment. The request of Applicant No. 1 has been turned down by the respondents vide the impugned order dated 26.04.2011 on the ground that the benefit of grant of financial upgradation under ACP Scheme is being granted to petitioners only in OA No. 420 of 2006.

2.16. The stand taken by the

respondents in their impugned order is absolutely contrary to the law laid down by the Hon'ble courts in the following cases. The applicants have relied upon the following cases:-

> ***"(a) 1985 (2) SLJ 58- Inder Pal Yadav & Ors. V/s. UOI & Ors.***
>
> *In this case the Hon'ble Supreme Court in para 5 has held as under:-*
>
> *"Therefore, those who could not come to the Court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment if not by anyone else at the hands of this Court"*
>
> ***(b) (1992) 19 ATC 94-GC Ghosh & Anr. V/s. UOI & Ors.***
>
> *In this case the Hon'ble Supreme Court has held as under:-*
>
> *"In the light of the command of Articles 14 and 16 of the Constitution of India the same treatment is required to be accorded to the petitioners regardless of the fact that they are serving the Eastern Railway unless it is shown that there is some distinguishing feature, for according a different treatment."*

(c) 2006 SCC (L&S) 447- State of Karnataka & Ors. V/s. C.Lalitha.

In this case the Hon'ble Supreme court in para 29 has held:-

"Serving jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the Court that would not mean that persons similarly situated should be treated differently."

(d) 2001(1) (CAT) SLJ 57- Y.B. Vishnuprasad & Ors. V/s. UOI & Ors.

In this case the Hon'ble Tribunal in para 5 has held as under:-

"It is most unfortunate that the respondents being a model employer is driving its employees to file such applications in different Tribunals even though the matter has been finally decided by the decisions of the various Benches of the Tribunal."

(e) 2003(2) (CAT) SLJ 124- Savita Rani & Ors. V/s. UT Chandigarh.

In this case the Hon'ble Tribunal in para 9 has held as under:

> *"The other point reflects the litigative zeal on the part of the administration. Should each and every employee be driven to file their case to take the same relief which has already been granted and allowed to other employees who are similarly circumstanced. The contention raised on behalf of the respondents that since the applicants were not party to the earlier decisions, the benefit thereof cannot be extended to them is abhorring to law and has to be rejected outright in view of the series of decisions of Apex Court and the High court as well as this Tribunal."*

2.17. It is evident from the aforesaid judgments that the courts have expressed their dissatisfaction towards the attitude of the Government in not implementing the judgments in respect of similarly situated cases and it is most unfortunate that the respondents being a model employer is driving its employees to file applications in different Courts even though the matter has been finally decided by the decisions of the various Courts and Tribunals.

2.18. The applicants submit that in continuation of their service from the date of initial appointment, they have been appointed/ absorbed in regular vacancies in continuation. Therefore

their service from the date of initial appointment is treated as regular service as has been held by the Hon'ble Supreme Court in the case of ***Direct Recruit Class II Engineering Officers Association V/s. State of Maharashtra (1990 (2) SLJ 40)*** wherein it has been held as under:-

> *"44. To sum up, we hold that:*
>
> *(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his initial appointment and not according to the date of his confirmation.*
>
> *The Corollary of the above rule is that where initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.*
>
> *(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly in the regularization of his service in accordance with the rules, the period of officiating service will be counted."*

The applicants submit that in fact similar and identical situation was referred to the Full Bench of this Hon'ble Tribunal in the case of ***Benjamin Jairaj Kurasu & Ors. V/s. Union of India & Ors. (1996(2) ATJ 504)*** *wherein the following question of law was referred:-*

"Whether chargemen appointed in casual vacancy or on casual basis but further continued to work for number of years with or without break, are entitled to be regularized and given seniority from the date of initial appointment or from the date of order of regularization when they came to be absorbed permanently in that particular cadre?"

The Applicants submit that after referring to the decision of the Hon'ble Supreme Court in the direct Recruit Class II Engineering Officers Association case, the Hon'ble Full Bench answered the question as follows:-

"The chargemen appointed against regular vacancies on casual basis who continued to work for a number of years without break, are entitled to get seniority from the date of their initial appointment and not from the date

of regularization."

3. In reply to the OA the respondents have taken preliminary objection that the applicant No. 1 has no locus standi to represent individual workmen numbering 4 and hence on this ground the OA alone is liable to be dismissed. Applicant No. 2 to 5 are Civilian employees, who were initially appointed as skilled workmen in temporary capacity and thereafter absorbed in service from the dates as stated by the applicants in the OA. The applicants are therefore, seeking regularization in this OA from the date of initial appointment in 2011. Hence, this OA suffers from gross delay and latches. The introduction of ACP Scheme cannot give them cause of action as for the next promotion only regular service is counted and on that basis the applicants were promoted.

3.1. On the issue of delay, the respondents have relied upon the following case laws:-

"(I) P.S. Sadasivawswamy V/s. S/o. Tamil Nadu AIR 1974 SC 2271.

(II) Jacob Abraham and others A.T. Full Bench Judgments, 1994-95.

(III) Ram Chandra Samanta V/s. UOI 1994

(26) ATC 228.

(IV) S.S. Rathore V/s. S/o. MP 1989 (2) ATC 521.

(V) Bhoop Singh V/s. UOI IR 1992 SC 1414.

(VI) Secretary to Govt. of India V/s. Shivaram M. Gaikwad (1995) 30 ATC 635= 1995(6) SLR (SC) 812.

(VII) Ex. Capt. Harish Uppal V/s. UOI 1994(2) SLJ 177.

(VIII) AIR 199 SC 564 Dattaram V/s. Union of India.

(IX) 1996 LLJ 1127 (SC) UOI V/s. Bhagnor Singh.

(X) (1999) 8 SCC 304 Ramesh Chand Sharma V/s. Udham Singh Kamal & Ors.

(XI) 2002(5) SLR (SC) 307 E. Parmasivan & Ors. V/s. UOI & Ors.

(XII) Union of India vs. M.K. Sarkar reported in (2010) 1 SCC (L&S) 1126.

(XIII) (2011) 2 SCC (L&S) 542 Union of India vs. A. Durairaj.

(XIV)(2011) 9 SCC 65 High Court Judicature at Patna vs. Madan Mohan Prasad.

(XV) UP Jal Nigam vs. Jaswant Singh reported in 2007 (1) SLR (SC) 561."

3.2. As per DoPT OM dated 09.08.1999, financial upgradation under ACP Scheme is admissible for regular service which is counted for regular promotions in terms of relevant recruitment/service rules. The casual/ officiating/temporary/ad-hoc/contractual service rendered prior to permanent absorption cannot be counted towards regular service for the purpose of grant of ACP benefits. Hence, applicants have been granted ACP benefits from the date of permanent absorption ignoring their officiating/ temporary service rendered prior to date of permanent absorption. The contention of the applicants is that their officiating/ temporary service should be counted for ACP benefits, which is not tenable.

3.3. Applicant No.2, on absorption in February, 1985, got promoted as HSK II and HSK-I on 31.12.1990 and 30.12.1995, respectively. He qualified for promotion as CM-II through Departmental examination in 30.05.1997. Similarly, applicant no.3 on absorption in April, 1985, got promoted as HSK-II and HSK-I on 31.12.1990 and 31.12.1999 respectively, Applicant no.4 on absorption in February, 1985, got promoted as HSK-II and HSK-I on 31.12.1990

and 31.12.1998 respectively. Applicant no.5 on absorption in January, 1985, got promoted as HSK-II and HSK-I on 30.12.1989 and 31.12.1996, respectively. All qualified for promotion as Chargeman also, subsequently.

3.4. The contention of the applicant to count service from the date of initial appointment as there is no break in service cannot be accepted for the purpose of ACP vide OM dated 09.08.1999, according to which individual is eligible for the benefits of ACP on completion of 12/24 years of service from the date of regular appointment only. The benefits of financial upgradation under the ACP scheme is to be granted from the date of regularization only, irrespective of there being no break in service, as continuous service from the date of regularization is taken into account for granting ACP on completion of 12/24 years of regular service. However, under MACP scheme the same is given from the date of initial appointment as per DoPT OM dated 19.05.2009.

3.5. The benefit of LTC was given only from the date of regular appointment and not from initial appointment. The increment and leave benefits were given from the date of initial appointment.

3.6. The respondents are only the implementing authorities to implement orders received by competent higher authorities.

3.7. However, with reference to the judgment in **N.R. Naik (supra)** ACP has been given from the date of regular vacancy and not from the date of initial appointment.

3.8. It cannot be the case that due to change in law, i.e. introduction of ACP Scheme the applicants are entitled for any reliefs. The judgments relied upon by the applicants have no relevance due to change in law.

3.9. Applicants cannot rewrite the ACP Scheme and change its clauses without challenging it, which is not permissible in law.

4. In the rejoinder, filed by the applicants the contentions in the OA have been reiterated, while resisting the contentions in the reply to the OA by respondents.

4.1. It is also submitted that the services of applicants from the date of initial appointment was not counted for any purpose i.e. increment, leave, LTC, pensionary benefits etc., though, R-1 issued OM of 24.11.1967, further amended by OM of 27.5.1980 to treat services

from the date of initial appointment to the date of regular appointment as regular service. In this connection OA.516 and 732 of 1988 was filed in **N.R. Naik (supra) decided on 24/25-8-1989** directing respondents to regularize the services from the date of initial appointment and grant benefit as mentioned in the OAs. Based on judgment in the said OA, order dated 26/6/1995 was issued extending benefit to similarly situated persons. This was in consonance with the ratios laid down judgment in **Inder Pal Yadav, G.C. Gosh, State of Karnataka vs. C. Lalitha, Vishnu Prasad vs. UOI (all supra)** etc. relied upon by applicant in this OA.

4.2. Following the implementation of OM of 1995, the same was considered in ***OA.755/2000 decided on 20.09.2002*** by the Ernakulam Bench of the Tribunal to grant the very same benefits that the applicants are now seeking for. This was followed by similar direction in other OAs as mentioned in OA, which were allowed and implemented.

4.3. As regards delay the applicants have relied upon the judgment of Hon'ble Supreme court (Constitution Bench) in the case of ***K.C. Sharma & Ors. V/s. Union of India & Ors. (1998 (1) SLJ 54).*** Applicants submit that no limitation will apply in the case of the applicants

as in the earlier referred OAs, the judgments arising therefrom have already been implemented. It is also pointed out that these OAs pertain to the same Department and Ministry, which Department and Ministry also implemented the orders passed by this Tribunal in these OAs. Therefore, there is indirect admission on the part of respondents that the Applicant No. 2 to 5 and the members of applicant No. 1 are similarly situated.

4.4. The Secretary, Ministry of Defence i.e. R-1 is the authority to issue the policy letters and give orders on the subject and hence it is not correct to say that R-1 is only the implementing authority.

4.5. The applicants have locus standi as provided under Rule 4 (5) (b) of CAT, Rules, 1987. They are similarly situated to applicants in other OAs as mentioned in this OA. No limitation can apply as per **K.C. Sharma (supra).**

5. The respondents have filed reply to the rejoinder relying upon the judgments of ***Punjab State Electricity Board Vs. Jagjiwan Ram and Ors. (2009) 3 SCC 661,*** wherein the Court has dealt-with the question of whether casual service can be considered as regular service for ACP or such type of scheme.

The Court held that it was not and allowed the appeal. The same issue has also been considered in similar vein in the case of ***Union of India and Ors. Vs. M. Mathivanan (2006) 6 SCC 57*** and in the case of ***State of Punjab Vs. Surjit Kaur 2011(6) SLR 155.***

5.1. The status of OAs implementation of mentioned by applicants as on the date of filing the Sur-rejoinder are as under:-

Sr. No.	**OA No.**	**Name of the Applicants**	**Status**
1	692 of 2004	G.K. Moolya & Others	Implemented
2	431 of 2005	V.N. Hatekar & Others	Implemented
3	682 of 2005	T.K. Neelambaran & Others	Implemented
4	53 of 2006	A.M. Shinde & Others	Implemented
5	1 of 2006	A.M. Pawar & Others	Implemented
6	420 of 2006	Indian Naval Employees' Union & Others	Under Implementation
7	407 of 2006	N.M. Kadam & Others	Implemented
8	352 of 2008	Surekha Arun Kunkulkar	Challenged in Hon'ble Bombay High Court vide WP 1384/2010 and case is

			pending for hearing.
9	532 of 2008	R.S. Panicker	Implemented
10	375 of 2007	J.B. Fernandes & Others	Under Implementation
11	07 of 2009	J.T. Joshi	Implemented
12	224 of 2010	V.M. Arote & Others	Under Implementation
13	373 of 2010	S.V. Rane & Others	Under Implementation

However the benefit was given to the applicants as per order received from competent authorities.

6. We have gone through the O.A. alongwith Annexures A-1 to A-12, Rejoinder, Misc. Petition 695 of 2015 for taking documents on record alongwith annexure MPA-1 to MPA-5, a Brief Note and Additional Written Notes of Arguments filed on behalf of the applicants.

7. We have also gone through the reply alongwith Annexure R-1, Reply to Rejoinder alongwith Annexures R-1 to R-3, Submission on behalf of the respondents in the form of reply to the written submission of applicants alongwith Annexure R-1 and R-2 and additional written notes filed on behalf of the official respondents.

8. We have heard the learned counsel for the applicant and the learned counsel for the respondents and carefully considered the facts and circumstances, law points and rival

contentions in the case.

Findings

9. Five issues arise for consideration in this OA. Firstly, whether the applicants' claim for grant of ACP w.e.f. date of initial employment and not from the date of absorption is tenable or not. Secondly, whether the applicants are similarly situated to petitioners in several judgments of the Tribunal relied upon by applicants and whether they cover the case of applicants or not. Thirdly, whether Larger Bench judgment in OA Nos.148/AN/2011, 164/AN/2011 and 165//AN/2011 dated 08.09.2014 can govern the case of applicants or not. Fourthly, when did cause of action arise and is there any delay in approaching the Tribunal. Fifthly, even if there is delay in filing OA, whether on the basis of earlier orders in earlier OAs by this and other Benches of the Tribunals applicants should be granted relief, only because they are similarly situated, ignoring delay.

10. As per original initial appointment order of Applicants No. 2 to 5 which has been placed before us in the course of oral hearing it is clear that all the applicants 2 to 5 were engaged on different dates between 1983-1984 as casual industrial employees (skilled workers) without any lien on regular employment and with the condition that the appointment can be terminated

without any notice and without assigning any reason. No guarantee of any extension of service beyond the period mentioned was permissible as per the order. It is also evident that they were subsequently appointed/absorbed against regular vacancies in the pay scale of Rs. 260-400/- (similar to the wage rate granted to them in the initial engagement order) only w.e.f. 02.04.1985, 11.01.1985, 22.02.1985 and 22.02.1985, in respect of Applicant Nos. 2 to 5, respectively. The order classified them as 'Industrial' and they were to be governed by the provision of temporary Industrial employees in the Defense service. The order also stated that their services can be terminated without assigning any reason. They were placed on probation for six months.

11. In the OA at para 4.3, the applicants submitted that they were granted all benefits such as annual increments, leave, pensionary benefits. They also submitted that their services from the date of initial appointment has been treated as regular service for all service benefits except for seniority. They also submitted that this was done on the basis of MoD OM of 24.11.1967 and 27.5.1980.

12. However, an undated but vital brief note has been filed by applicants. There is no reference in the rozanama that the applicants prayed for filing

this brief note or whether it was permitted for filing by the Tribunal. This document has crept into OA records, in a manner not readily identifiable. This is not filed by way of affidavit also. Although, this is not part of main pleadings and not filed under affidavit and a very vital point has emerged at para 2 of the brief note, partly contrary and partly in addition to pleadings at para 4.3 of the OA, in the interests of justice and not to cause further delay in the adjudication of a 2011 matter, we proceed to deal with the submission at para-2 of the 'brief note'.

13. Para-2 of the brief note reads as follows:-

> *"The applicants submits that Applicant Nos.2 to 5 and the members of Applicant No.1 have been treated as* ***regular employees from the date of their initial /original appointments*** *vide* ***Ministry of Defence Memorandum No.3(3)/65/D(Civ-II) dated 6th October 1996 (page No.152 of Compilation)*** *wherein it has been provided that if the employment of a casual industrial employees is to continue beyond six months, the individual will not be discharged and reemployed from the dame date. Instead, he will be allowed to continue in service without any break and will be* ***treated as a regular industrial employee from the date of his original***

> ***appointment as Casual industrial employee.*** *The Applicants submit that in accordance with the said Memorandum, Applicant Nos.2 to 5 and other members of Applicant No.1 have been treated as regular employees from the date of their initial appointment itself and only thereafter the Applicants have been granted all the benefits as admissible to regular employees viz. fixation of pay, grant of annual increments, calculation of leave, pension and gratuity, Terminal benefits, three years limit of children education allowances, reimbursement of tuition fees, house rent allowance, travelling allowance, compensatory and other allowance, medical attendants, medical reimbursement, grant of quasi permanent status, and compulsory contribution to General Provident Fund/Contributory Provident Fund, advance of pay etc. The Applicants submit that all these benefits are granted only to regular employees and not to casual employees. Granting of these benefits clearly proves that the service of the Applicants in regular service from the date of their initial appointment.".*

14. At para 4.3 of the OA it had been stated that they were covered by the OM of 24.11.1967 and 27.5.1980. But the said OM of 1967 has been made available by way of MP/695 of 2015 on

13.8.2015 before this Tribunal as **MPA 2 at p.155-156** of the OA record without any specific pleadings, another MoD OM of 6.10.1966 (MPA.-1 p.153-154) was filed. Only a summary of the contents of OM of 1966 was placed on record in MP.695 of 2015. At para 2 of the Brief note some pleadings on the OM of 1966 has been made available. It is evident from a reading of the 1966 and 1967 OMs that the former applied to casual industrial employees i.e. applicants, while the latter applied to casual non industrial employees who were apparently the petitioners in the earlier OAs relied upon by applicants.

15. We reproduce the contents of the OM of 1966, pertaining only to casual industrial employees, which reads as follows:-

> " ***Memorandum***
>
> *Subject:- Conversion of casual industrial employees into regular industrial employees.*
>
> *The undersigned is directed to say that in terms of para 1(V) of this Ministry's letter No. 12(17)/51/10805/D(Civ), dated the 10th September, 1953 if the employment of a casual industrial employee is to continue beyond six months,*

the individual will not be discharged and reemployed from the same date. Instead, he will be allowed to continue in service without any break and will be treated as a regular industrial employee. This change of category from casual to regular can be declared even before the expiry of six months as soon as it is definitely known that the individual will continue in service beyond six months.

AG's Branch etc. are requested to confirm that the above procedure is being followed by them for conversion of casual industrial employees into regular temporary industrial employees. They are also requested to indicate the number of employees so converted in terms of the above Govt. orders for the period from 01.01.62 to 31.12.1966.

The information may please be furnished to this Ministry latest by the 15th February, 1967."

16. Paras 1,2,6,7 of the OM of 24.11.1967 pertaining to casual non industrial employees reads as follows:-

"*1. I am directed to refer to*

this Ministry's letter No.3(3y/G5/11820/D(CIV.II) dated the 26th September, 1966 as amended by this Ministry's Corundum No.11 (3)/G&/D/(CIV.II), dated the 6th March, 1967 and to say that a question has been raised whether the provisions of the said letter will also be applicable to the casual non-industrial employees paid out of contingencies, conservancy, incidental and miscellaneous, annual training or other similar grants. It is clarified that the orders mentioned above will also be applicable to such casual non industrial employees as do not come within the purview of the classification of regular employees made in this Ministry's letter No.2(23)49/3877/D(Civ), dated the 5th May 1952, and also to these paid out of annual training and other similar grants.

2. I am also directed to say that the past service rendered from the date of appointment by such of the casual non-industrial personnel including those mentioned in para 1 above who are converted as regular non industrial employees, will be treated as having been rendered in the regular capacity. They will be entitled to all benefits as for regular employees vix. Fixation of pay, grant of annual increments, calculation of leave, pension and gratuity terminal benefits, three years limit of children education

allowance, reimbursement of tuition fees, houses rent allowance, travelling allowance, compensatory and other allowance, medical attendance, medical reimbursement, grant of quasi permanent status, and compulsory contribution to General Provident Fund/Contributory Provident Fund , advance of pay etc. The financial benefit will however, be allowed from the date of Part II orders notifying the change of their status as regular employees.

6. The casual service rendered by the casual employees on the pay admissible in terms of this Ministry's O.M. No.11 (1)G1/2181/D (CIV.I) dated the 15th March 1961 as amplified vide O.M. No.11(4)/63/7672/D(CIV.I) dated the 14th Aug 1963 or in terms of this Ministry O.M. No.13 (43) / 60/3408/D(CIV.I) dated the 15th April 1961 will count for purpose of giving them all the benefits admissible to regular employees on their conversion as such.

*7. On the conversion of regular temporary employees, the individual concerned will continue to be paid from the relevant * heads of account from which they were being paid. However, for the purpose of grant of the concessions mentioned in para 2 above they will be deemed to have been paid from regular pay heads. The individuals who have been or are to be brought on to the regular terms of service under*

> *this Ministry's letter No.**2(23)/49/3877/D(CIV) dated the 5th May 1952, letter No.Air HQ/9099/43/PP&R/AF/5529/D (CIV) dated the 2nd June 1952 and other similar letters, if any, issued in respect other terms of service *** will also be accorded similar treatment, i.e. they will be entitled to all the concessions mentioned in para 2 above, from the date they are converted as regular employees.*"

17. Hence, para 2 of the Brief note claiming "benefits of 1966" amounts to "suggestio falsi". Applicants claimed that they were covered by the said OM of 1967 at para 4.3 of the OA under affidavit. They claim that they were provided with all the listed benefits in the OM of 1967 (not listed in the OM of 1966) in the Brief note (filed without affidavit). The applicants cannot claim the benefits of the OM of 1967, applicable to casual non-industrial employees. The conditional nature of the contents of other OM of 1966 are at complete variance with the categorical grant of benefits offered to casual non industrial employees.

18. Further, the applicants have not produced any document to show that the benefit of 1967 OM, relevant for causal non industrial employees has been applied to them, as casual industrial

employees, not withstanding a contrary OM of 1966 or that they were given the benefits of 1967 OM, being regular employees. Such a pleading should have been filed by way of an affidavit and not as a supplementary brief note. They have relied on the OM 1966 for casual industrial employees, but listed the benefits of 1967 meant only for non industrial employees.

19. Hence, the OM by which applicants claim to be covered for benefits given to regular employees apply to casual non-industrial employees. The contents of the circular issued only one year before the OM of 1967, contains precious little to support the claim of applicants that they were receiving all the benefits mentioned in para 2 of OM of 1967 or the facility for conversion to become regular employee as per para 6 of the said OM. Hence, pleadings at Para 4.3 of the OA and para 2 of the brief note are at variance with each other in terms of the claim of benefit secured as per 1966 OM, which did not apply to applicants 2-5. In the reply dated 24.06.2016 to para-2 of the brief note the respondents have completely denied the contentions at para 2 stating that the benefits admissible to regular employees were given only from the date of regular appointment and not from the initial appointment and that only

increment and leave benefit were given from the date of initial appointment.

20. Hence, applicants have not proved that they have enjoyed the benefits of OM 1967 applicable to casual non-industrial employees, and used this to claim that they were also converted to regular temporary employees, while such a facility was not available for casual industrial employees. Hence, the contention of applicants that they were made regular is not established. This position matches with the condition of appointment letters being only from the date of absorption, and not from date of original engagement being governed by different conditions of appointment. Hence, their appointment was w.e.f. from the date mentioned in the appointment/absorption order. Their services were regular from these dates and the services rendered prior to that, even though a small period, remained casual service. The Applicants 2 to 5 accepted the order of appointment in 1985 and no regularization of the service w.e.f date of initial appointment was ever sought for or effected in respect of applicants no.2-5.

21. Per contra, in the order in OAs relied upon by applicants, the petitioner were all casual non-industrial employees who alone were governed by the 1967 OM. We list a few,

which were as follows:-

	O.A.No.	Filed by
1.	OA/755/2002	LDCs
2.	OA/420/2006	Store Keepers
3.	OA/431/2005	Peons
4.	OA/682/2005	Stenographers
5.	OA/53/2006	Stenographers
6.	OA/407/2006	UDC
7.	OA/532/2008	Stenographers
8.	OA/375/2007 and OA/7/2009	Stenographers.
9.	OA/224/2010	UDC
10.	OA/550/2006	Librarians
11.	OA/373/2011	Daftary

22. Evidently, the applicants in all these OAs were governed by the OM of 1967 and from a reading of some of the orders made available in the present OA, most of the petitioners were regularized without granting seniority and then allowed ACP benefits from the date of initial appointment. There is no OA order relied upon in this OA, which pertain to casual industrial employees, such as applicants. Hence, this OA is apparently the first case seeking ACP benefits for casual industrial employees from the date of initial appointment, without any iota of evidence that they were covered by the OM of 1967 and given benefits of 1967 OM, having been converted as regular employees. Their appointment orders are exactly to the contrary i.e. regular

only from the date of appointment on absorption.

23. Applicants 2-5 accepted the appointment order of 1985 and never challenged the same in the light of MoD OMs of 1967 (read with 1966 OM), if at all they felt that there was discrimination between the casual non-industrial employees and casual industrial employees, even as a spate of orders went in favour of several cadres within the category of non industrial employees in the various OAs. The OAs have been wrongly relied upon by applicants in this OA to show that they were similarly situated, when in fact they were not. They remained regular only from the date of appointment on absorption unlike petitioners in other OAs, who were eligible for benefit under the 1967 OM to be converted from casual to regular. The **OA 755/2000 (supra)** relied upon the 1967 OM to grant the benefit to petitioners in that OA. This OM was similarly relied upon to allow the **OAs in 420/2006** and several other OAs and are being relied to present a case of similarity of facts and circumstances, which is not establihsed.

24. The ACP scheme was meant to over come the issue of long stagnation in one grade. Each of the applicants 2-5, as shown by the respondents got three promotions from skilled to HSK-II to HSK-I and then as Chargeman II, all

between 1985 -1997, 1985-2006, 1985 to 2004, 1985 to 2005 for applicants 2-5, respectively. The applicants attempt to grab the ACP benefits is in addition to the steady regular promotions showing adequate avenues of regular promotions and not having to face stagnation, which is not the case in respect of casual non industrial employees. This fact stands out very clearly in the very orders in OAs relied upon by applicants. The additional prospects of getting benefits under MACP has also motivated them to wake up late and to take up the matter in 2011, by adopting any means to claim that they are similarly situated to non industrial employees, which in fact they are not as already established.

25. From the foregoing, the spate of orders in favour of non industrial employees under the cover of 1967 OM i.e. the provision for conversion from casual to regular is easily discernible. That was a major deciding factor to grant ACP benefits from the date of initial appointment in these cases. There was no issue of regularization of the casual service in their cases. Their cases were of regularization without seniority. Hence, ACP benefits were granted from the initial date of appointment. Hence, even when the ACP Scheme barred consideration of the casual service of applicants in those

OAs, they were declared eligible for grant of ACP benefits from the date of initial appointment, i.e. covering both casual and regular services. The applicants cannot be legally allowed to take similar advantage, just because of the subsequent introduction of the ACP/MCP and claim themselves to be similarly situated even without their casual service not having been regularized.

26. Consequently, in some case the respondents straightway complied with the orders, and in others, with some delay after obtaining approval of the competent authority. Hence, the track of implementation of the Tribunals orders appears very strong. In few cases alone the orders of Tribunals were challenged before the Courts of appeal, where also the outcomes went in favour of applicants in these OAs. In many cases the respondents conceded during the pendency of OAs. In other cases, they obtained order of competent authority based on the OA order, on a case to case basis. But all these OAs pertained to casual non-industrial employees.

27. Having established based on facts, that the applicants in this OA are dissimilarity situated, the orders of Tribunals relied upon by the applicants are completely distinguishable. The order in **OA 755/2000 (supra)** and later on

OA.420/2006 (supra) and many other similar OAs, relied upon by the applicants, resulted in favour of applicants on the basis of OM of 1967. Hence, common favorable consequences emerged in respect of casual non industrial employees for conversion from casual to regular employment, on regularization of his casual service. Hence, to qualify for ACP benefits from the date of initial appointment like the applicants in the said orders, the present applicants had to prove that their casual service was regularized to consider themselves similarly situated, and therefore eligible for ACP benefits granted to them which they have failed to establish. Accordingly, no right accrues to applicants for claiming ACP benefits from initial date of appointment. No discrimination has been made out and all the judgments viz. **Indra Pal Yadav, G.C. Gosh vs. UOI, State of Karnataka vs. Lalita, Santa Rani, Vishnu Prasad (all supra)** do not also apply.

28. So long as they are different from the petitioners in the earlier OA, they remain distinct for not having got the benefit of ACP from the date of initial appointment. The said dates in 1985 had to be treated/ remained as their first entry into service. In such a situation the judgment of ***Punjab State Electricity Board Vs. Jagjiwan Ram***

and Ors. (2009) 3 SCC 661 applies and has been rightly relied upon by the respondents. Pre 1985, applicants were not in regular service, after 1985 they were in regular service. Hence, as per para-3 of the ACP Scheme applicants are not eligible to get relief. Para 3 of the ACP Scheme reads as follows:

> *"3. Groups 'B', 'C' and 'D' services/ posts and isolated posts in Groups 'A', 'B', 'C' and 'D' Categories:-*
>
> *3.1. While in respect of these categories also, promotion shall continue to be duly earned, it is proposed to adopt the ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Keeping in view all relevant factors, it has therefore, been decided to grant two financial upgradations (as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 (in relation to Groups 'C' and 'D' employees) entered into with the staff Side of the National Council (JCM) under the ACP Scheme to Groups 'B', 'C' and 'D' employees on completion of*

> *12 years and 24 years (Subject to condition No. 4 in Annexure-I) of regular service respectively. Isolated posts in Groups 'A', 'B', 'C' and 'D' Categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees (including those with temporary status), ad hoc and contract employees shall not qualify for benefits under the aforesaid Scheme. Grant of financial upgradations under the ACP Scheme shall, however, be subject to the conditions mentioned in Annexure-I.*
>
> *3.2. Regular service for the purpose of the ACP Scheme shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant Recruitment/ Service Rules."*

Clearly according to this ACP Scheme the effective date from which the case of the applicants can be considered is only from the date of their permanent absorption.

29. The Apex Court in the case of ***Punjab State Electricity Board Vs. Jagjiwan Ram and Ors. (2009) 3 SCC 661***

held at para 9,10, 14, 20,21 as follows:-

9. We have considered the respective submissions. Generally speaking, a work charged establishment is an establishment of which the expenses are chargeable to works. The pay and allowances of the employees who are engaged on a work charged establishment are usually shown under a specified sub-head of the estimated cost of works. The work charged employees are engaged for execution of a specified work or project and their engagement comes to an end on completion of the work or project. The source and mode of engagement/recruitment of work charged employees, their pay and conditions of employment are altogether different from the persons appointed in the regular establishment against sanctioned posts after following the procedure prescribed under the relevant Act or rules and their duties and responsibilities are also substantially different than those of regular employees.

10. The work charged employees can claim protection under the Industrial Disputes Act or the rights flowing from any particular statute but they cannot be treated at par with the employees of regular establishment. They can neither claim regularization of service as of right nor they can claim pay scales and other financial benefits at par with regular employees. If the service of a work charged employee is regularized under

any statute or a scheme framed by the employer, then he becomes member of regular establishment from the date of regularization. His service in the work charged establishment cannot be clubbed with service in a regular establishment unless a specific provision to that effect is made either in the relevant statute or the scheme of regularization. In other words, if the statute or scheme under which service of work charged employee is regularized does not provide for counting of past service, the work charged employee cannot claim benefit of such service for the purpose of fixation of seniority in the regular cadre, promotion to the higher posts, fixation of pay in the higher scales, grant of increments etc.

14. The ratio of the above mentioned judgments is that work charged employees constitute a distinct class and they cannot be equated with any other category or class of employees much less regular employees and further that the work charged employees are not entitled to the service benefits which are admissible to regular employees under the relevant rules or policy framed by the employer.

20. A reading of the scheme framed by the Board makes it clear that the benefit of time bound promotional scales was to be given to the employees only on their completing 9/16 years regular service. Likewise, the benefit of promotional increments could be given only on completion of 23 years regular service. The use of

the term `regular service' in various paragraphs of the scheme shows that service rendered by an employee after regular appointment could only be counted for computation of 9/16/23 years service and the service of a temporary, adhoc or work charged employee cannot be counted for extending the benefit of time bound promotional scales or promotional increments. If the Board intended that total service rendered by the employees irrespective of their mode of recruitment and status should be counted for the purpose of grant of time bound promotional scales or promotional increments, then instead of using the expression `9/16 years regular service' or `23 years regular service', the concerned authority would have used the expression `9/16 years service' or `23 years service'. However, the fact of the matter is that the scheme in its plainest term embodies the requirement of 9/16 years regular service or 23 years regular service as a condition for grant of time bound promotional scales or promotional increments as the case may be.

21. For the reasons mentioned above, we hold that the respondents were not entitled to the benefit of time bound promotional scales / promotional increments on a date prior to completion of 9/16/23 years regular service and the High Court committed serious error by directing the appellants to give them benefit of the scheme by counting their work charged service.

30. In the case of ***Union of India and Ors. Vs. M. Mathivanan (2006) 6 SCC 57;*** the court held at paras 13 and 19 as follows:-

> *"13. Reading of the above two paragraphs makes it abundantly clear that so far as placing of an officer in the 'next higher grade' is concerned, what is relevant and material is that such official belonging to basic grades in Group 'C' and 'D' must have completed "sixteen years of service in that Grade". The said paragraph, no where uses the connotation 'regular' service. Paragraph 2 which provides for Departmental Promotion Committee and consideration of cases of officials for 'promotion', provides for sixteen years of 'regular' service. The Tribunal, therefore, rightly considered paragraph 1 as relevant and held that basic eligibility condition for being placed in the next higher grade is that the officer must have completed sixteen years of service in the basic grade in Group 'C' and Group 'D'. Though in other paragraphs, the service was qualified by the adjective 'regular', the said qualification was not necessary for the purpose of paragraph 1. Since the employee wanted the benefit of placement in 'next higher grade', what was required to be established by him was that he had completed sixteen years of service in the grade and the said requirement had*

been complied with in view of the fact that with effect from September 30, 1983 he was appointed as Warrant Officer. He was, therefore, entitled to the benefit of 'next higher grade' under paragraph 1 from 1999. The authorities were, therefore, not justified in rejecting the claim and accordingly the petition was allowed. The High Court rightly upheld the direction of CAT."

"*19. Since the respondent had completed sixteen years of service in 1999, he would be entitled to the benefit of paragraph 1 of Time Bound Promotion Scheme and the action of the authorities in not granting the said benefit was illegal and contrary to law. The Central Administrative Tribunal as well as the High Court were, therefore, right in setting aside the said action and by directing the authorities to extend the benefit of the Scheme to the respondent. We see no infirmity in the reasoning adopted and conclusion recorded by the CAT or by the High Court and find no substance in the appeal of the appellants."*

31. The application of the above judgment, means that the benefits can be granted only in strict compliance of the ACP scheme which is unambiguously worded and framed under Article 309 of the Constitution.

32. Similarly, in State of ***Punjab***

vs. Surjit Kaur (Supra) relied upon by respondents (decided on 08.02.2011) a similar view was taken in respect of adhoc service for claiming ACP benefit by respondents. The appeal was allowed. Para 7 and 8 of the judgment reads as follows:-

> *"7. A perusal of the clarification would show that the period of 8 or 18 years is to be reckoned from the date of appointment on regular service and any service rendered on adhoc basis is not to be counted for the purposes of grant of proficiency step-up(S). Even otherwise, the view of the Hon'ble the Supreme Court as laid down in the case of State of Haryana Vs. Haryana Veterinary and Ahts Association and another, (2000) 8 SCC 4: (2000(5) SLR 223 (SC) is absolutely clear that it is only regular service which could be counted for the purpose of grant of ACP scale. However, the learned Single Judge has placed reliance on a judgment of Hon'ble Supreme court rendered in the case of State of Haryana V/s. Deepak Sood, Civil Appeal No. 4446 of 2008 decided on 15.07.2008 to hold otherwise. A perusal of the judgment in Deepak Sood's case (Supra) would show that in that case, there was no question of reckoning of adhoc service for the purposes of grant of ACP grade before the Court and the only question was whether past service rendered with the Municipal Council would count for grant of ACP grade when the employee has been appointed*

on transfer basis with the Government. Therefore, the aforesaid judgment has no application to the facts of the case in hand.

8. As a sequel to the above discussion, the appeal with regard to second relief granted by the learned Single Judge is allowed and it is held that the writ petitioner-respondent was not entitled to count her adhoc service for the purposes of claiming ACP grade. However, we clarify that her adhoc service shall be reckoned for the purposes of grant of pensionary benefits as directed by the learned Single Judge. The appeal stands disposed of."

33. In **OA No. 41 and 232 of 2013 (Supra)** delivered on 05.08.2015 by Kolkatta Bench of this Tribunal and relied upon by respondents, the applicants prayer was for counting their ad hoc service for provisions of the ACP Scheme. The Tribunal noted that even though the said ad hoc service was counted for pensionary benefits, it held that the ACP rule barred consideration of ad hoc service for ACP and that had to be strictly complied with. The Tribunal further held that if the applicants wanted that ad hoc service should count as qualifying service for all purposes, they should have challenged at the material time for counting ad hoc services for all

purposes which they did not. The same is the case of present applicants.

34. The Tribunal in **OA 41 and 232 of 2013 (Supra)** also relied upon the Full Bench judgment of the Tribunal in **S.P. Sarkar vs. Union of India & Others in O.A.No.148/AN/2011, OA/164/AN/2011 and 165/AN/2011** to hold that adhoc service cannot count for grant of ACP/MACP benefits. The judgment reads as follows:-

> *"On bare reading of both ACP and MACP Scheme, it is abundantly clear that the countable service period as residency period for grant of financial upgradation under the aforesaid scheme must be functioning of employee on "regular basis" for said period. Under Clause 3.1 of the ACP Scheme it is clearly stipulated that casual employees (including those who are of temporary status), ad hoc and contract employees shall not qualify for benefit under the ACP Scheme. It is also stipulated that grant of financial upgradation is subject to condition mentioned in Annexure I thereof.*
>
> *In Annexure I, condition stipulated about fulfilment of promotion criteria, namely, bench mark, satisfaction, departmental examination etc for grant of financial upgradation and it is clearly stipulated that promotion norms shall be ensured for grant of benefit under ACP Scheme.*
>
> *In para 3.2, the regular services has been interpreted to mean the*

eligibility service counted for regular promotion in terms of relevant Recruitment/Service rules. Similarly, under the MACP Scheme under Clause 3 of the Government Instruction as quoted above, it is clearly stated that casual employees including those granted 'temporary status' and employees appointed in the Government only on ad hoc basis or contract basis shall not qualify for benefits under the aforesaid scheme. In Annexure I of the said MACP Scheme under Clause 9, regular service has been defined as service commencing from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. It is further stipulated that service rendered on ad hoc/contract basis before regular appointment on pre-appointment training shall not be taken into reckoning.

Having regard to the definition of regular service as mentioned in the ACP Scheme under Clause 3.2, it is clear that service counted for regular promotion in terms of the recruitment rules is only countable to grant financial upgradation under ACP Scheme. Under Clause 3.1, it is provided that completion of 12 years and 24 years of service must be on regular service respectively and there is debarring clause about non-consideration of period of service for the said benefit of those employees who rendered service as casual employees, ad hoc and contract

employees during concerned period. Hence, in terms of the Scheme itself, the applicant#s prayer to count the ad hoc service prior to the regularisation of service at the entry point of the service as Junior Engineer is not legally sustainable.

…….

In the instant case, it appears that the applicants prayed for grant of 2nd financial upgradations benefit under ACP Scheme after 24 years of service including service as ad hoc appointee, but as they could not fulfil residency period prescribed in cadre of Jr. Engineer (Civil) on regular service, they have claimed to treat ad hoc service period as regular service. They have claimed addition of the ad hoc service for the purpose of grant of 2nd financial upgradation benefit under ACP Scheme. As the condition of ACP Scheme stipulates rendering of regular service in a cadre for prescribed period thereto, it requires to be satisfied strictly for grant of said benefit. Regular service means appointment in a permanent post in the particular cadre of service. In the instant case admittedly at the initial stage of appointment they were not eligible for appointment in cadre of Jr. Engineer to a particular post of Jr. Engineer (Civil), due to preferential clause to appoint locals of A & N Islands in the nature of preferential treatment in terms of Article 16(4) of the Constitution of India with the objective purpose to uplift the economic, social and

cultural standard of local inhabitant of the A & N Islands which has special geographical configuration surrounded by Sea and Forest being separated from Main land of India. In anthropological angle local inhabitants of A & N Islands used to maintain their livelihood with food available in the forest and sea initially. Due to social obligation addressed in the Constitution their upliftment keeping preferential scope in job seems to be justified. Since applicants were not locals at the material time in terms of the definition of local, they had no chance for appointment in the post of Jr. Engineer (Civil). However, due to non-availability of locals they got a chance to be appointed as a temporary ad hoc appointee in terms of the Government order, rules and regulations which was accepted by the applicants and knowing the Government order, rules and regulation they accepted the job and the status of temporary ad hoc appointee. Having regard to the nature of entry in service and continuation thereof as ad hoc appointee prior to regularisation, I am of the view that their services cannot be counted as regular service. Meaning of regular service could be ascertained from judicial pronouncement at different points of time by the Apex Court. In the case of State of Haryana v. Haryana Veterinary and AHTS Association and Anr. reported in 2000(8) SCC 4, it is held in paragraph 15 as follows:-

"15. A combined reading of the aforesaid provisions of the Recruitment Rules puts the controversy beyond any doubt and the only conclusion which could be drawn from the aforesaid Rules is that the services rendered either on an ad hoc basis or as a stopgap arrangement, as in the case in hand from 1980 to 1982 cannot be held to be regular service for getting the benefits of the revised scale of pay or of the selection grade under the government memorandum dated 2.6.1989 and 16.5.1990, and therefore, the majority judgment of the High Court must be held to be contrary to the aforesaid provisions of the Recruitment Rules, consequently cannot be sustained."

The Haryana Veterinary and AHTS Association (Supra) was relied upon in the case of State of Rajasthan v. Jagdish Narayan Chaturvedi reported in 2009(12) SCC 49, while the distinction of ad hoc appointment vis-`-vis regular appointment was dealt with in paragraph 9 and 18, which reads such:-

9. Ad hoc appointment is not made in terms of the requirements of the Rules. The benefit is extended to avoid stagnation. In case of ad hoc employees, stagnation is till the regularisation is made. The stress in the present case is on regular appointment to cadre/service. As rightly contended by learned counsel for the State, the High Court confused itself with appointment to post. The question of promotion

arises only when appointment is a regular appointment. Appointment to the post is not relevant; on the other hand, what is relevant is the period relatable to the cadre of the service.

18. In order to become #a member of service# a candidate must satisfy four conditions, namely,

(i) the appointment must be in a substantive capacity;

(ii) to a post in the service i.e. in a substantive vacancy;

(iii) made according to rules;

(iv) within the quota prescribed for the source.

Ad hoc appointment is always to a post but not to the cadre/service and is also not made in accordance with the provisions contained in the recruitment rules for regular appointment. Although the adjective "regular" was not used before the words "appointment in the existing cadre/service" in Para 3 of the G.O. dated 25.1.1992 which provided for selection pay scale the appointment mentioned there is obviously a need for regular appointment made in accordance with the Recruitment Rules. What was implicit in the said paragraph of the G.O. when it refers to appointment to a cadre/service has been made explicit by the clarification dated 3.4.1993 given in respect of Point 2. The same has been incorporated in Para 3 of the G.O. Dated 17.2.1998."

On the question whether seniority to be counted by adding the ad hoc

service when service was regularised on the strength of such ad hoc service, the Apex Court answered negatively holding interalia that ad hoc service not countable even for fixing seniority in the cadre. Reliance is placed in the judgement passed in the case of ***State of Haryana & Others v. Vijay Singh & Others, reported in 2012(8) SCC 633.*** *The same view in the case of seniority as well as promotion matter, was expressed by earlier Larger Bench in the case of* ***P.P.C. Rawani (Dr.) & Others v. Union of India & Others, reported in 2008(15) SCC 332.*** *Hence, having regard to judicial pronouncements discussed above, ad hoc service is not countable for grant of benefit under ACP Scheme.*

……..

In the instant case the applicants have not challenged the vires of ACP Scheme fixing terms and conditions of fulfilment of "regular service for certain period" namely, 12 years for 1st financial upgradation and 24 years for 2nd financial upgradation and also the debarring clause in the Scheme for not counting the temporary, casual and ad hoc service within the residency period of 12 and 24 years respectively with reference to grant of 1st and 2nd financial upgradation respectively. As no challenge made against said conditions of ACP Scheme, ACP Scheme to be considered in its face value with reference to eligibility clause used therein and no court of law can

change the meaning of the language used in the ACP Scheme without any ambiguity for not counting the ad hoc service which is not "regular service" as per meaning under service jurisprudence and scheme for the purpose of grant of financial upgradation benefit.

ACP Scheme as discussed above stipulated that the service on ad hoc basis is not countable to determine the residency period of stagnancy of 12 years or 24 years for 1st and 2nd financial upgradations respectively. Hence, the relief for consideration of the ad hoc service for calculating the residency period eligibility for grant of financial upgradation benefit is not permissible under ACP Scheme. It is a settle legal position that when somebody intends to apply the scheme to pray benefit under the scheme, he has to satisfy strictly all the terms and conditions as stipulated in the scheme. The said principle has been applied as "strict compliance rule" to comply with terms and conditions of the scheme for grant of any benefit in the case of ***Union of India & Anr. V. Shashank Goswami & Anr. reported in 2012(11) SCC 307****. Said case was on issue of appointment on compassionate ground due to death of sole earning member of the family and while adjudicating the issue, the Apex Court held that the condition stipulated in the scheme or administrative instruction should be followed strictly and strict compliance is must for grant of any relief. The same view earlier*

expressed in the case of ***State Bank of India & Others v. Shweta Sahu, reported in 2010(15) SCC 146.***

"27. Our attention has been drawn to an additional affidavit filed by the respondents wherein inter alia it has been shown that a large number of employees who had been absorbed were initially appointed after 1.10.1986. Article 14 carries with it a positive concept. It would have no application in the matter of enforcement of an order which has its source in illegality.

Having regard to the aforesaid findings and observations, I am of the view that the observation and findings of the three Judges Bench earlier quoted, is proper and justified on the factual matrix of the case vis-a-vis on application of Scheme of ACP now MACP."

35. In this connection it is the contention of the applicant that the facts and circumstances in **OA Nos.148/AN/2011, 164/AN/2011** and **165/AN/2011 (supra)** are distinguishable and hence the judgment of the Larger Bench is distinguishable from the present case. They contend that in the said case, applicants were initially appointed as Junior Engineers purely on temporary and ad-hoc basis. Not being locals, they could only become regular in violation of RRs. The applicants case in the present OA is that they are regular and still denied ACP from the date of

initial appointment. However, the answer to this question is that the potential to get their casual service regularized cannot be ruled out, since applicants fulfilled prescribed eligibility criteria mentioned in the RRs and were selected through Employment Exchange and worked without any break, therefore a case is made out that the movement from casual to regular was seamless. But it has been established in this OA by us that the casual service was never got regularized. It remained casual and never regular.

36. Hence, in our considered view, the judgment of the Larger Bench applies on all fours to the case of applicants to declare them non-entitled to the relief prayed for.

37. In the present case, not having got the casual service period regularized, applicant cannot be considered for grant of ACP benefits by including the said period as if it was regular service. In this case also the applicants have not challenged, the relevant provisions of the ACP Scheme. They did not challenge in 1985 when their regular service was made effective only on absorption in 1985, when the cause of action first arose. Not having got the casual service regularized at the material time they have forfeited the right to be considered for ACP benefits by including their casual service period.

38. The applicants cannot use the relief clause in this OA as a ploy, to indirectly, get the casual period regularized, by using the argument of similarity in law and facts, when fact applicant's case is found comprehensively dissimilar, and claim that a right had already accrued to be conferred with the benefits granted to applicants in dissimilarly situated OAs. Allowing the prayer in the OA would have meant that the Tribunal would have involved itself, in granting regularization of casual service period which is the prerogative of the respondents to grant or not grant the same depending upon when and whether it was prayed for before the respondents. Not having the casual service period regularized by competent authority, by not approaching at all any time after 1985, and still claiming ACP benefits in this OA, amounts to jumping the gun. This fact was well known to applicants, still they filed the OA praying for relief as if their casual service period has been regularized. For these reasons we conclude that the applicants has not come with the clean hands before this Tribunal.

39. In view of the foregoing, we have clearly established that vital to the question of grant of ACP benefits was the issue of regularization of the casual service period for which cause of

action arose in 1985. Had the casual service period been made regular within a reasonable period after 1985, then respondents could have considered the fact that they were appointed against regular vacancies, that they fulfilled the requirement of RRs and were selected through the Employment Exchange etc. and then considered grant of the required regularization. Not having done so in time, their issues have become stale with efflux of time. The prayer in this OA cannot over come the staleness.

40. Clearly, this OA has been filed by applicants to have the best of both worlds i.e. having availed fast and timely regular promotion, they also want to get the ACP benefits in violation of the provisions of Scheme, since such ACP benefits were clearly permissible to be granted for casual non industrial employees as per MOD OM of 1967 and not by another circular and as allowed by Courts/ Tribunals in cases filed by casual non-industrial employees. But this is attempted to be done deliberately by having this Tribunal to gloss over the fact that their casual service has never been regularized, since it was never sought for and the OM of 1967 never applied to applicants.

41. On the issue of locus standi of applicants, it appears that the Union representing casual industrial and casual non-industrial employees has,

filed this case, since one set of members/employees i.e. Non-industrial employees have legitimately received the benefit of ACP, while the other set i.e. Industrial employees such as applicants have not received the same benefit. This OA is an attempt of applicant No.1 to establish parity among all employees for grant of this benefit. We do not know the facts of the case, in respect of employees other than Applicant Nos. 2 to 5. But, we are completely certain that the cases of applicant 2 to 5 do not merit any consideration based on facts and law. The Union's contention is that all other members in the category of applicants are similarly situated on the basis of which the joint petition was filed and allowed, in the ultimate analysis is yet to be established based on facts.

42. Hence, the action of the respondents is liable to be upheld as being valid and legal, as a result of which the OA is liable to be dismissed.

43. Accordingly, OA is dismissed. No costs.

(Ms.B. Bhamathi) **(Arvind J. Rhoee)**

Member (A) **Member (J)**

Srp/ak/-