

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH
REGN. No.:OA/050/00453/2014**

Reserved on: 22.02.2018

Date of Order: 14.03.2018

C O R A M

**HON'BLE MR. A.K. UPADHYAY, ADMINISTRATIVE MEMBER
HON'BLE MR. JAYESH V.BHAIRAVIA, JUDICIAL MEMBER**

Tribhuwan Jha, aged about 57 years, S/o Late Radhika Raman Jha, resident of village and PO-Nawada, PS-Bahera, District-Darbhanga, at present working as Lower Division Clerk in the Office of the Director of Census Operations, Bihar, Co-operative Bank Building, Ashok Rajpath, Patna.

..... Applicant.

- By Advocate: - Mr. M.P.Dixit.
Mr. S.K.Dixit.

-Versus-

1. The Union of India through the Home Secretary, Government of India, New Delhi.
2. The Registrar General of India, Kotah House Annexe, 2/A, Man Singh Road, New Delhi-110 011.
3. The Joint Director of Census Operations, Bihar, Co-operating Bank Building, Ashok Raj Path, Patna-800 004.
4. The Assistant Director of Census Operations, Bihar, Co-operative Bank Building, Ashok Raj Path, Patna-800 004.

..... Respondents.

By Advocate: - Mr. M.D.Dwivedi,
Addl. Standing Counsel.

ORDER

Per A.K. Upadhyay, A.M.:- This OA has been filed seeking the following reliefs :-

“8.A) That the Hon’ble Tribunal be pleased to direct the respondents to grant the 1st financial up-gradation i.e. ACP after completion of 12 years of service i.e. 09.08.1999 the

said scheme has been framed and active by the 5th Pay Commission Report, Circular issued by the Department of Personnel and Training, New Delhi vide notification no. 35034/1/97-Estt.(D) dated 9th August, 1999 and to fix the pay accordingly as per Rule 22(1)(a)(2).

B) That the Hon'ble Tribunal be further pleased to quash the office order No. A.11016/1/2011-Part.I-1126 dated 24.04.2014 as contained in Annexure-26 passed by the Assistant Director of Census Operations, Bihar, Patna for grant of 2nd Modified Assured Career Progression (for short MACP) w.e.f. 11.04.2014 in the pay scale of Rs.5200-20200 with GP 2800/- instead of from 30.04.2005 in the pay scale of Rs.5000-8000 revised as Rs.9300-34,800 with GP 4200 i.e. after completion of 24 years of service on 30.04.2005 as per service book maintained by the respondents and as per 5th Pay Commission Report Circular issued by the Department of Personnel and Training, New Delhi vide notification No. 35034/1/97-Estt.(D) dated 9th August, 1999.

C) That this Hon'ble Tribunal further be pleased to direct the respondents to grant the 3rd Modified Assured Career Progression (for short MACP) w.e.f. 30.04.2011 in the pay scale of Rs.15600-39100 with GP 5400 i.e. from the date he has completed the 30 years of service on 30.04.2011 as per 6th Pay Commission Report circular issued by the Department of Personnel and Training, New Delhi vide notification No. 35034/3;/2008-Estt.(D) dated 19th May, 2009.

D) That this Hon'ble Tribunal also further be pleased to direct the respondents to fix the pay of the applicant accordingly after grant of said benefits of ACPs/MACP henceforth.

E) That this Hon'ble Tribunal also further be pleased to direct the respondents to pay the all consequential benefits and award the compensation with litigating costs also to the respondents due to unnecessary harassment to the applicant.

F) That this Hon'ble Tribunal be pleased to grant any other relief or reliefs which may deem fit and proper in the facts and circumstances of this case.

G) That the Hon'ble Tribunal be pleased to quash the office order No. A 11016/1/2011-Part.IV-410 dated 25.02.2015 as contained in Annexure-A/32 passed by the Assistant Director of Census Operations, Bihar, Patna for grant of 1st Assured Career Progression (for short ACP) w.e.f. 11.04.2006 in the pay scale of Rs.4000-6000 instead of 09.08.1999.

H) That the Hon'ble Tribunal further be pleased to quash the letter No.32011/24/2012-Ad.IV dated 08.07.2013 as contained in Annexure-A/31 passed by the Under Secretary office of the Registrar General of India, New Delhi.

I) That the Hon'ble Tribunal further be pleased to direct the respondents to treat the period w.e.f. 30.04.1981 to 10.04.1994 as qualifying service for all purposes the aforesaid period applicant was working on the post of Jr. Stenographer/Lower Division Clerk. The aforesaid period the Hon'ble Tribunal, Patna was treated as Notional in its order dated 24.05.1995 in OA No. 528/1993 and MA No. 94 of 1994 and the respondents have treated as Temporary/regular service and maintained the service book (Annexure-A/17 to the OA No. 453 of 2014) and the law is also settled by the Hon'ble Central Administrative Tribunal, Bombay Bench in OA No. 705 of 2007 dated 12.09.2011, in spite of that the respondents have unreasonably and malafidely the aforesaid period have not counted as qualifying service for the purpose of ACT/MACP.

J) That the Hon'ble Tribunal be pleased to direct the respondents to grant the 1st ACP after completion of 12 years of service i.e. w.e.f. 09.08.1999 in the pay scale of Rs.4000-6000 revised pay scale of Rs.5200-20200 with grade pay of Rs.2400 and 2nd ACP after completion of 24 years of service i.e. w.e.f. 30.04.2005 in the pay scale of Rs.5000-8000

revised pay scale of Rs.9300-34800 with grade pay of Rs.4200 instead of 11.04.2014 in the pay scale of Rs.5200-20200 with grade pay Rs.2800 and 3rd MACP after completion of 30 years of service i.e. w.e.f. 30.04.2011 in the pay scale of Rs.15600-39100 with grade pay of Rs.5400 with all consequential benefits.

K) That the Hon'ble Tribunal be pleased to quash the office order No.A.19018/1/2009-861 dated 08.05.2015 as contained in Annexure-A/35 passed by the Assistant Director of Census Operations, Bihar, Patna for incorrect and beyond the rule fixation of pay after grant of 1st Assured Career Progression (for short ACP) w.e.f. 11.04.2006 in the pay scale of Rs.5200-20200 with grade pay Rs.2400 and 2nd MACP w.e.f. 11.04.2014 in the pay scale of Rs.5200-20200 with grade pay Rs.2800/-."

2. The brief facts of the case are as follows:-

(i) The applicant was initially appointed by Memo No. A 12026/15/79-1958 dated 30.04.1981 as Jr. Stenographer for three months on ad hoc and temporary basis by the Director of Census Operations, Bihar (Annexure-A/2). The said appointment letter mentioned that this was ad hoc and purely temporary and could be terminated without notice at any time. It was also mentioned that the period of ad hoc appointment would not be counted for seniority and promotion to higher post. However, the service of the applicant was extended from time to time and he worked up to 04.12.1986.

(ii) It appears that in the meanwhile the applicant submitted representations dated 28.08.1984 apparently for regular appointment to the post to which the respondents intimated vide their letter dated 26.09.1984 (Annexure-A/3) that for a regular appointment it was necessary for a person to qualify in the examination conducted by the Staff Selection Commission.

(iii) The DOPT came out with a circular vide Memo No. 6/60/84-CS II dated 28.02.1985 (Annexure-A/4) which stipulated that the ad hoc employees working as LDC, Telephone Operators, etc. will be

given a final chance to appear in the selection examination to be held on 28.07.1985. This circular also annexed the scheme of the examination. The applicant appeared in the examination but he could not succeed, and as such, he was not regularized and as per the policy decision of the DOPT he was terminated from the service as per press notification dated 05.12.1986. The applicant challenged this termination order in OA No. 51 of 1987 before the Patna Bench of the Tribunal which was dismissed by the order dated 17.08.1989. The applicant moved the Hon'ble Apex Court in SLP No. 13374 of 1989. This was dismissed by the Hon'ble Supreme court by order dated 11.12.1989 (Annexure-A/5). The Hon'ble Supreme Court, however, observed that it was open to the applicant to make a representation to Government for consideration of his case for regularization as Lower Division Clerk, if that has not already been considered.

(iv) Accordingly, the applicant made a representation dated 03.01.1990 for regularization as LDC to the Registrar General, India, which was rejected by the Dy. Director vide order dated 23.02.1990 stating that it was not possible to appoint him to the post of LDC. The applicant submitted another representation date 27.03.1990 to the Registrar General which was rejected vide order dated 15.05.1990. This was challenged by the applicant in OA No. 420 of 1990 before CAT, Patna Bench. The Tribunal vide its order dated 10.04.1992 quashed the rejection orders dated 23.02.1990 and 15.05.1990, and the official respondents were directed to re-engage the applicant as temporary LDC and to give him a chance to appear in the next selection test to be conducted by the Staff Selection Commission for the post of LDC. The Tribunal also observed that the applicant will not be entitled to salary and allowances for the period he was not in job.

(v) In pursuance of the direction of the Tribunal the applicant was re-engaged as ad hoc and purely temporary LDC vide order No.A-20020/6/92-2335 dated 06.06.1992. In the appointment letter it was clearly mentioned that he would have to appear in the Clerk Grade Examination fixed in September, 1992 conducted by the Staff

Selection Commission, Allahabad. However, his application was rejected by the SSC on the ground that he was over age.

(vi) The applicant filed OA No. 528 of 1993 before CAT, Patna Bench seeking a direction to the official respondents to regularize his services as permanent LDC and to give him the benefit of notional continuity of service w.e.f. 05.12.1986, the date of termination of his service on the post of Jr. Stenographer. He also sought exemption from appearing in the SSC Examination in view of peculiar facts and circumstances of his case.

(vii) During the pendency of OA 528 of 1993 the respondents directed the applicant to appear in the test on 26.12.1993 to be conducted by the SSC, Allahabad. The applicant filed MA No. 149 of 1993 praying that till final disposal of the OA 528 of 1993 respondents be restrained from terminating his service and further restrained from compelling the applicant to appear in the said examination to be held on 26.12.1993. The applicant could not appear in this examination ostensibly because of his wife's illness. As the sanction of the post expired, the service of the applicant was terminated w.e.f. 11.04.1994 vide office order No. A-20026/6/92-833 dated 11.04.1994. The applicant challenged this in MA No. 94 of 1994 within OA No. 528 of 1993 praying for interim stay of termination order. This MA was not allowed.

(viii) The Tribunal disposed of the OA No. 528 of 1993, along with MA No. 94 of 1994, by order dated 24.05.1995 with the following directions:-

“28. The respondents are directed to reinstate the applicant on the post of Lower Division Clerk/Assistant Compiler as a regular employee w.e.f. 11.04.1994 without requiring him to undergo any typewriting test. The compliance of this direction of putting the applicant back on the post of Lower Division Clerk/Assistant Compiler shall be made by respondents within one month of the receipt of this order. The arrears of pay and allowances w.e.f. 11.04.94 till the date of reinstatement shall be paid within one month of the actual date of reinstatement. The notional seniority of the applicant, as aforesaid, shall be given immediately after his reinstatement and the applicant shall be given the benefits consequent upon reckoning his seniority as per the directions made hereinabove.”

(ix) In compliance of the Tribunal's direction the applicant was re-appointed to the post of LDC on regular basis w.e.f. 11.04.1994 vide office order No. C 18013/22/93-2324 dated 21.09.1995.

(x) The applicant filed CCP No. 57 of 1995 (arising out of OA 528 of 1993) which was dropped by order dated 11.09.1996 and notices were discharged stating that the authorities have complied with the order dated 24.05.1995 in OA No. 528 of 1993, though belatedly. It was also observed that the applicant was not entitled to re-fixation of pay in the grade of LDC giving him notional increments.

(xi) The applicant was promoted to the post of UDC in the pay scale of Rs.4000-100-6000 on ad hoc and purely temporary basis for six months on 17.04.1998. This was further extended to 12.04.1999 (Anenxure-A/7 series). It was mentioned in the order that the applicant would not be entitled for claiming regular promotion nor would he be entitled for seniority on the basis of this ad hoc promotion. Further, it was mentioned that this would be subject to the decision of the CAT, Patna.

(xii) It appears that the Jt. Director of Census Operations, Bihar treated the service of the applicant on the post of Jr. Stenographer from 30.04.1981 to 05.12.1986 notionally and on the post of LDC w.e.f. 06.12.1986 vide Office Order No. C 18013/22/93-2711 dated 20.11.1995.

(xiii) On the recommendation of the DPC the applicant was promoted to the post of UDC on regular basis w.e.f. 13.04.1999 vide order No. A 12014/1/82-Part-656 dated 20.04.1999 (Annexure-A/10) which clearly stated that this order may be changed depending upon the final decision of CAT, Patna Bench in OA No. 82/97 and MA No. 16/98. This OA was filed by another set of nine employees, namely, Eqbal Hassan and others. In this OA the applicant was made respondent no.4. After considering the matter the application was allowed by order dated 28.09.2001 by which the nine applicants in that OA were regularized as LDC w.e.f. 28.07.1985. In the light of this judgment the respondents cancelled

the promotion of the applicant from LDC to UDC w.e.f. 13.10.2003 and the provisional gradation list of UDC w.e.f. 01.01.2003 circulated vide office memo no. A23021/1/2002-882 dated 15.10.2003.

(xiv) In the meanwhile, the applicant had filed OA No. 573 of 1996 for direction to the respondents to post the applicant on the post of Jr. Stenographer w.e.f. 06.12.1986 with all consequential benefits and payment of all the legal dues after regularizing his services as Jr. Stenographer w.e.f. 30.04.1981 with all service benefits. This OA was dismissed by order dated 02.06.2004. This was challenged by the applicant before the Hon'ble Patna High Court in CWJC No. 8962 of 2004 which was dismissed by order dated 27.11.2006.

(xv) The applicant challenged his reversion in OA No. 920 of 2003. In this OA interim stay was granted on 28.10.2003 and finally the OA was dismissed by order dated 30.04.2014.

(xvi) Meanwhile, the applicant had filed another OA No. 157 of 2006 seeking direction to the respondents to fix the initial pay of the applicant to the post of LDC from 07.04.1981 to 05.12.1986, grant him notional increment from 06.12.1986 to 08.06.1992 and, accordingly, fix his basic pay from 09.06.1992 and protection of his pay with respect to his *junior* Md. Eqbal Hassan. Finding no merit in the OA, this was dismissed on 30.04.2014.

(xvii) Now, the present OA has been filed seeking reliefs as quoted at the beginning of this order.

3. The main grounds taken by the applicant in support of his claim is that his date of regularization to the post of LDC is 06.12.1986 as per the order dated 24.05.1995 passed in OA No. 528 of 1993 and MA No. 94 of 1994. The applicant has referred to the proceedings of the DPC dated 13.04.1999 (Annexure-A/9). However, as we have noted in para 2 (xiii) above, the promotion order dated 20.04.1999 (Annexure-A/10) in pursuance of the said DPC, clearly

mentioned that this may be changed subject to the order of the Tribunal in OA No. 82 of 1997 and MA No. 16 of 1998. We have further observed in the same para that this OA was filed by one Eqbal Hassan and others and the present applicant was respondent no.4. This OA was allowed. Thus, because of the adverse order against the applicant, this promotion order was cancelled and he was reverted.

4. In the summary of facts we have given the complete sequence of litigations instituted by the applicant and decisions thereto. Therefore, we are not repeating the overlapping submissions made by the applicant. Suffice it to say that the applicant is deliberately obfuscating by mis-reading, selective reading and incomplete reading of the previous judgments. Some of the relevant cases and the judgments which we have mentioned have not been cited by the applicant. We perused those judgments after obtaining files from the Registry.

5. During argument the learned counsel for the applicant highlighted the verification of service done by the authorities on 10.08.2009 (Annexure-A/17) in which the date of commencement of the continuous service has been mentioned as 30.04.1981, of which temporary service is w.e.f. 30.04.1981 to 05.12.1986 and officiating service (regular) from 06.12.1986 (on the post of LDC). On that basis the applicant claims first ACP after completion of 12 years i.e. on 09.08.1989, second ACP after completion of 24 years from 30.04.2005 (i.e. counting service from 1981) and third MACP from 30.04.2011 treating 30 years of service from 1981.

6. Per contra, the respondents have treated his regular service from 11.04.1994. Accordingly, they have given him second MACP from 11.04.2014.
7. Heard the parties and perused the documents.
8. The sole issue to be examined in this matter is the date from which the applicant’s regular service has to be counted - whether 30.04.1981 as claimed by the applicant or 11.04.1994 as contended by the respondents.
9. As we have mentioned earlier, essentially the same matter has been agitated in several previous litigations, sometimes with identical phrases and other times by some drafting changes. It is also self-evident that the Tribunal cannot revisit the matters already settled. Therefore, it would be expedient to examine the previous litigations and carefully sift through the findings to find out what has been already adjudicated which throws light on the present dispute. For this purpose, the previous litigations have been summarized in the table given below with the gist of the prayer and the gist of the orders:-

Sl No.	Case No.	Prayer in the application	Summary of the court’s order
1.	OA 51/1987	Applicant challenged order dated 05.12.1986 by which his service was terminated on the ground that he could not pass the exam conducted by the SSC.	(i) The OA was dismissed by CAT Patna Bench vide order dated 17.08.1989 . (ii) Applicant preferred an SLP(C) No. 13374 of 1989 before the Hon’ble Supreme Court which was dismissed vide order dated 11.12.1989 with the observation that <i>“it would be open to the petitioner to make a representation to Government for consideration of his case for Lower Division Clerk, if that has not already been considered”</i> .

			(iii) The applicant made representations dated 03.01.1990 and 27.03.1990 to the Registrar General, India, New Delhi. However, both the representations were rejected vide orders dated 23.02.1990 and 15.05.1990 respectively indicating that it was not possible to appoint him on the post of LDC.
2.	OA 420/1990	Being aggrieved by the orders of the Tribunal dated 23.02.1990 & 15.05.1990, the applicant preferred this OA.	<p>(i) CAT Patna Bench quashed the rejection orders dated 23.02.1990 and 15.05.1990 vide its order dated 10.04.1992 and the official respondents were directed to re-engage the applicant as temporary LDC and to give him a chance to appear in next selection test conducted by SSC for the post of LDC.</p> <p>(ii) The applicant was re-engaged as ad hoc and purely temporary LDC vide order dated 06.06.1992. In the appointment letter it was clearly mentioned that he would have to appear in the Clerk Grade Exam in September, 1992 to be conducted by SSC, Allahabad. However, his application was rejected on the ground that he was over age.</p> <p>(iii) The office informed the applicant to appear in the special examination which was to be held on 26.12.1993. However, the admit card issued to the applicant was not properly printed and under such circumstances he was not allowed in the said examination.</p>
3.	OA 528/1993	Applicant had filed this OA seeking a direction to the official respondents to regularize his service as a permanent LDC and to give him the benefits of notional continuity of service w.e.f. 05.12.1986, the date of termination of service on the post of Jr. Stenographer. He also sought exemption from appearing in the SSC in view of peculiar facts and circumstances of his case.	<p>On 24.05.1995 CAT Patna Bench passed order in OA 528 of 1993, along with MA No. 94/1994 directing the respondents to reinstate the applicant on the post of LDC/Assistant Compiler as a regular employee w.e.f. 11.04.1994 without requiring him to undergo any typewriting test. The applicant was allowed arrears of pay and allowances w.e.f. 11.04.1994 till the date of reinstatement. He was also allowed notional continuity of service w.e.f. 30.04.1981, the date of his entry in Govt. service as stenographer. However, he shall not be entitled for any payment for the period he was out of job, as already decided in the order dated</p>
	MA No. 149/1993 (OA 528/93)	Applicant had filed this MA praying that till final disposal of OA 528 of 1993 official respondents	

		be restrained from terminating the service of the applicant and further restrain them from compelling him to appear in the examination to be held on 26.12.1993.	10.02.1992.
	MA No. 94/1994 (OA 528/93)	In the meanwhile the Applicant was terminated vide order dated 11.04.1994. He filed this MA for interim stay of termination order dated 11.04.1994.	
4.	CCP No. 57/95 (OA 528/93)	Applicant filed this Contempt Petition for implementation of order dated 24.05.1995 passed by the Hon'ble CAT in OA 528/93.	Contempt proceeding was dropped by order dated 11.09.1996.
5.	OA 573/96	Applicant filed this OA for directions to the official respondents to post the applicant on the post of Jr. Stenographer w.e.f. 06.12.1986 with all consequential benefits and treating the said period to be on duty on the post of Jr. Stenographer for the purpose of determining the seniority and payment of all the legal dues after regularizing his services as Jr. Stenographer w.e.f. 30.04.1981 with all service benefits.	The OA was dismissed by the Tribunal by order dated 02.06.2004.
6.	CWJC No. 8962 of 2004	Applicant moved Hon'ble Patna High Court against Tribunal's order dated 02.06.2004 in OA 573 of 1996.	The writ petition was dismissed by the Hon'ble Patna High Court vide its order dated 27.11.2006.
	OA 82/1997	<i>Filed by other set of nine employees Eqbal Hussain & Ors. in which the applicant was made respondent no.4. They claimed seniority over the applicant (i.e respondent no.4 in this OA).</i>	<i>The OA was allowed by order dated 28.07.2001 directing that the applicants shall be regularized w.e.f 28.07.1985.</i>
7.	OA No. 920/2003	Applicant challenged the reversion order dated 13.10.2003 by which he was reverted from the post of UDC to the post of LDC.	CAT Patna Bench vide its interim order dated 28.10.2003 stayed the reversion order dated 13.10.2003. Ultimately, finding no merit in the OA, the case was dismissed vide order dated 30.04.2014.

8.	CWJC No. 10153 of 2014	Applicant moved Hon'ble Patna High Court against Tribunal's order dated 30.04.2014.	The writ petition is pending for admission.
9.	OA 157/2006	Applicant filed this OA seeking direction upon the respondents – (i) To fix the initial pay of the applicant on the post of LDC w.e.f. 07.04.1981 to 05.12.1986 in the pay scale of Rs.1200-2040 (scale fixed at Rs.1290/- w.e.f. 06.12.1986 as per F.R.22(1)(a)(2). (ii) To calculate and grant the notional increment from 06.12.1986 to 08.06.1992 on the post of LDC and to fix the basic pay accordingly on the post of LDC w.e.f. 09.06.1992. (iii) To protect the pay as per pay protection rules in respect of his junior Md. Eqbal Hassan, UDC. (iv) To pay the arrears of differences of salary on the post of LDC from 09.06.1992 to 16.04.1998 and on the post of UDC from 17.04.1998 till date.	CAT Patna found no merit in the OA and as such, the OA was dismissed vide order dated 30.04.2014.
10.	OA 453/2014	Present OA	

10. It is worthwhile to note that the applicant's initial entry was purely on an ad hoc basis continued from time to time up to 05.12.1986. Meanwhile, his representation for regularization had already been rejected on the ground that he had not qualified in the regular selection test. The challenge of termination order in OA No. 51 of 1987 was dismissed. SLP against this order was also dismissed by the Hon'ble Supreme Court. The liberty given to the applicant was conditional only if his representation had already not been considered. Since the authorities had already considered his

representations, they could have very well not entertained his fresh representation. However, his representation was again rejected. The challenge against this in OA No. 420 of 1990 only gave him a relief of re-engagement on as is where is basis subject to the condition that he has to qualify in the selection test. The first time he seems to have got some substantive relief was in OA No. 528 of 1993 in which by order dated 24.05.1995 the authorities were directed to reinstate the applicant on the post of LDC as a regular employee w.e.f 11.04.1994 without requiring him to undergo any typewriting test. This order was complied by the authorities. Thus, it becomes clear that there is a clear mention of the date of regular employment from 11.04.1994 in the operative part of the order dated 24.05.1995 in OA No. 528 of 1993 which has been accepted by the respondent authorities. However, there still remains some ambiguity whether the Tribunal had given any direction to treat him as a regular employee w.e.f. 30.04.1981. For this, we have to refer to the subsequent judgments of the Tribunal.

11. The applicant had filed a contempt petition, CCPA No. 57 of 1995, alleging non-compliance of the order dated 24.05.1995 in OA No. 528 of 1993. This contempt petition was discharged holding that the order had been complied with, though belatedly. It was also observed that the applicant was not entitled to payment for the period he was out of job prior to being reengaged as temporary LDC in pursuance of the order dated 10.02.1992 passed in OA No. 420 of 1990. It was further ordered that the applicant was not entitled to

notional increments. Thus, it is evident that the applicant was out of job for about six years for which no notional increment was allowed. This fact in itself causes serious dent in the claim of the applicant that his service should be treated from 30.04.1981 for the purposes of ACP and MACP. It is to be mentioned that the length of service required for ACP and MACP means regular continuous service.

12. The applicant still valiantly continued approaching the Tribunal. The Tribunal too has been over-indulgent towards him.

13. We quote below the relief sought in OA No. 573 of 1996:-

“(i) That your Lordships be pleased to command and direct the respondents to post the applicant on the post of Junior Stenographer w.e.f. 06.12.1986 with all consequential benefits.

(ii) That Your Lordships be pleased to command and direct the respondents to treat the applicant on the parent post of Junior Stenographer from the post of Lower Division Clerk and to treat the said period to be on duty on the post of Junior Stenographer for the purpose of determining the seniority and paid all the legal dues for which the applicant is entitled to and the services of the applicant on the post of Junior Stenographer be regularized w.e.f. 30.04.1981 with all service benefits.

(iii) That your Lordships be also pleased to grant any other relief/reliefs which may be deemed fit and proper.”

This OA was dismissed by order dated 02.06.2004. The writ petition against this order was also dismissed. Therefore, his claim for service from 30.04.1981 already stands dismissed by the order of the Tribunal affirmed by the Hon’ble Patna High Court.

Therefore, the applicant cannot claim ACP and MACP on the basis of his regular service from 30.04.1981. Repeating these claims again and again in subsequent litigations is an abuse on the process of law.

14. The applicant, however, still persisted with OA No. 157 of 2006 with overlapping reliefs as follows:-

“(a) To direct the respondents to fix initial pay of the applicant on the post of Lower Division Clerk w.e.f. 07.04.1981 to 05.12.1986 in the pay scale of Rs.1200-2040 and then as per FR 22(1) (a)(2) w.e.f. 06.12.1986 (at Rs.1290/-).

(b) To grant increments from 06.12.1986 to 08.06.1992 on the post of LDC and to fix his basic pay accordingly on 09.06.1992.

(c) To direct the respondents to protect his pay as per rules viz-a-viz his Junior Md. Eqbal Hassan who was getting pay of Rs.5600 (basic pay) per month applicant being senior was getting Rs.4700 w.e.f. 17.03.2005 (date of regularization of Md. Eqbal Hassan as UDC).

(d) To direct the respondents to pay arrears of different of salary on the post of LDC from 09.06.1992 to 16.04.1998 and on the post of UDC from 17.04.1998 till date with 12% interest per annum.

(e) Any other relief as deemed fit and proper.”

This OA was dismissed by order dated 30.04.2014 in a long judgment of 40 pages after surveying his previous litigations. It appears that this order has not been challenged so this has attained finality.

15. Thus, the following facts are clear from the forgoing discussions:-

(i) His entry on 30.04.1981 was purely temporary on ad hoc basis with a condition that it can be terminated any time and the

period of engagement shall not be counted for seniority or promotion.

(ii) He was terminated from service w.e.f 06.12.1986. He was re-engaged by virtue of Tribunal's order dated 10.04.1992 with a condition that for regular service he has to appear in the selection test.

(iii) The Tribunal has already held that the period he was out of service he is not entitled to any wages or any increment.

(iv) His regularization was ordered by the Tribunal with effect from 11.04.1994 without passing the typing test, by the order of the Tribunal dated 24.05.1995 in OA 528 of 1993. His subsequent prayer for treating his service as Jr. Stenographer w.e.f 30.04.1981 and thereafter LDC from 06.12.1986 has been dismissed by the Tribunal and the Hon'ble High Court Patna.

16. The learned counsel for the applicant submitted a written synopsis with list of citations besides summary of the present case, on 26.02.2018. The learned counsel for the respondents also filed a written argument.

17. In the synopsis, filed on behalf of the applicant, the following judgments have been cited:-

(i) CAT Mumbai Bench OA No. 705 of 2007; order dated 12.09.2011 – Iftikhar Ahmad Deshmukh vs. D.G.Sports Authority of India & Ors.;

(ii) Hon'ble Supreme Court C.A.No.6253 of 1998- State of Tripura vs. K.K.Roy; judgment dated 12.12.2003;

(iii) CAT Chandigarh Bench – OA No. 1308/CH/2010-Rajpal vs. Union of India & Ors., order dated 31.05.2011;

(iv) Hon'ble High Court of Punjab & Haryana-CW(P) No. 19387 of 2011-Union of India & Ors. vs. Rajpal & Anr., judgment dated 19.10.2011.

(v) SLP (CC) No. 7467 of 2013-Union of India vs. Rajpal –Judgment dated 15.04.2013;

(vi) CAT Pr. Bench- OA No. 904 of 2012-Sanjay Kumar & Others vs. Secretary, Ministry of Defence & Ors., order dated 26.11.2012.

18. In all the above cited judgments, the continuity of the service was not in dispute. In the present case the dispute is about the date from which the regular service has to be counted. Therefore, the cases cited by the learned counsel for the applicant has no application here. As far as present application is concerned, we have observed in the foregoing paragraphs the Tribunal has already adjudicated these issues earlier.

18. In the light of the above settled matter, his claim of service from 30.04.1981 on the basis of some erroneous verification of service done by some official is untenable. The OA is, therefore, dismissed. Since the applicant has been repeatedly abusing the process of law, he deserves a deterrent punishment. However, taking a lenient view we impose a nominal cost of Rs.1000/- upon him, which the authorities shall be entitled to recover from him.

Sd/-
(Jayesh V.Bhairavia)
Member (Judl.)

Sd/-
(A.K.Upadhyay)
Member (Admn.)

skj