

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ALLAHABAD BENCH**  
**ALLAHABAD**

Dated: This the 21<sup>st</sup> day of December 2018

**Original Application No 330/00241 of 2013**

**Hon'ble Mr. Gokul Chandra Pati, Member – A**  
**Hon'ble Mr. Rakesh Sagar Jain, Member – J**

Smt. Ahilya Devi, Widow of Late Shri Dharam Nath Prasad Singh, R/o House No. 1129, Avas Vikas Colony, Kunara Ghat, District – Gorakhpur – 273008.

. . .Applicant

By Adv: Sri Rakesh Verma

**V E R S U S**

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi.
2. Additional Director General Menpower (M.P.-8), Inspectorate of Records, Adjutant Generals Branch, Integrated Headquarters, Ministry of Defence (Army), R.K. Puram, West Block – 3, New Delhi – 110 066.
3. Secretary, Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, North Block, New Delhi – 110 001.
4. Commanding Officer and Chief Records Officer, Gorakha Records Office, Kunara Ghat, District Gorakhpur.

. . . Respondents

By Adv: Sri Firoz Ahmad.

**ORDER**

**By Hon'ble Mr. Gokul Chandra Pati, Member – A**

The OA has been filed for the following reliefs:-

- “i. to issue a writ, order or direction in the nature of Certiorari the impugned order dated 12.09.2012, passed by the Respondent No 2, rejecting the claim of counting of initial two years service rendered as LDC. (in lieu of Combatant) for the purpose of benefits under the A.C.P. Scheme only on the ground that the persons, who have not approached to the Court, cannot be allowed the said benefit which has been allowed to those, who went to the Court and obtained judgments in their favour (Annexure A-1 to Compilation No. 'I' of this petition).*
- ii. to issue a writ, order or direction in the nature of Mandamus directing the Respondent Nos. 2 & 3 to count two years service rendered by the petitioner with effect from 12.01.1996 in the direct entry grade as L.D.C. (in lieu of Combatant) for the purpose of grant of first financial benefits under the A.C.P. Scheme and to grant the said*

***benefit with effect from 12.01.2008 when the petitioner completed 12 years of regular service in the pre-revised Scale of Pay of Rs. 4000 – 6000 and to make fixation / re-fixation accordingly and further fixation may also be directed to be done in the revised pay in the Pay Band Rs. 5200 – 20200 plus Grade Pay Rs. 2400/- per month with effect from 01.01.2006 pursuant to the recommendation of the VIth C.P.C., as accepted by the Govt. of India and to pay the arrears thereof together with interest thereon @ 9% per annum, within a period as may be fixed by this Hon'ble Tribunal.***

***iii. to issue any other suitable writ, order or direction in the facts and circumstances of the case which this Hon'ble Tribunal may deem fit and proper.***

***iv. to award cost of the petition in favour of the petitioner.”***

2. The facts as per the OA in brief are that the applicant was appointed as a lower division clerk (in lieu of combatant) [in short LDCC] by the respondents on compassionate ground on 12.1.1996 in the revised pay scale of Rs. 5200-20200 plus Grade Pay of Rs. 1900/- with effect from 1.1.2006. Government of India introduced the Assured Career Progression Scheme (in short ACPS) vide order dated 9.8.1999 (Annexure A-3) in order to mitigate the situation arising out of stagnation of the employees due to lack of promotional posts. The ACPS was made applicable with effect from the issue of the order till 31.8.2008 and after that date Modified ACPS (in short MACPS) was launched with effect from 1.9.2008. Under the ACPS, an employee after completing 12 years and 24 years of regular service will be eligible for non-functional financial upgradation to the next promotional pay scale as per the hierarchy of posts in the organization, subject to fulfillment of the eligibility criteria for such promotion as per the rules. The grievance of the applicant is that even if he had completed 12 years of service on 12.1.2008, he was not allowed the benefit of ACPS on the ground that his initial two years service as LDCC was temporary service which cannot be counted for the purpose of the ACPS. It is stated in the OA that the applicant suffered financial loss due to the decision of the respondents not to count first two years of service as LDCC for the purpose of ACPS.

3. As stated in the OA, the applicant was allowed first upgradation under MACPS on 1.9.2008 after completion of 10 years of regular service and was placed on the next higher Grade pay of Rs. 2000/- from Rs.1900/- per month. The applicant was also promoted to Senior Clerk on regular basis with effect from 1.12.2012 raising her pay to Rs. 5200-20200 plus Grade Pay of Rs. 2400/- which she would have got w.e.f. 12.1.2008 if the benefit of ACPS would have been allowed after counting two year of

her service period she spent as LDCC. Thus, the applicant allegedly suffered financial loss on account of the decision of the respondents.

4. It is stated in the OA that some of the similarly placed employees challenged the decision of the respondents in OA No. 85/2006 in Madras Bench of the Tribunal in the case of S. Thomas vs. Union of India and another, in which the respondents were directed to count 2 year period in question for the purpose of grant of ACPS. Union of India filed a Writ Petition before Hon'ble Madras High Court and the said Writ Petition was dismissed. The SLP filed against the decision of Hon'ble Madras High Court was also dismissed by Hon'ble Apex Court. It is the case of the applicant that the issue attained finality after which the respondents should have allowed the benefit to the applicant who is similarly placed as other employees who were parties to the above litigations. Other OAs were filed by similarly placed employees and all these OAs were allowed by the Tribunal. But instead of extending the benefits to all similarly placed employees, the respondents have issued a general order dated 12.9.2012 (Annexure A-1 to the OA) not to allow the benefit to similarly placed employees, if they have not approached the Court. This order dated 12.9.2012 has been impugned in this OA.

5. The respondents have filed Counter Affidavit without disputing the facts. Their submission is that as per the policy of the Government, only regular service is to be counted for the purpose of regular promotion and financial upgradation. Accordingly, the applicant who had joined on 12.1.1996 as LDCC, was eligible for first financial upgradation on 1.9.2008, which has been allowed vide order dated 7.1.2010 (Annexure CA-1). The averments of the applicant about the OAs filed by similarly placed employees have not been denied in the Counter Affidavit.

6. In the Rejoinder filed by the applicant, no new ground has been raised. Copy of the order of Madras Bench of the Tribunal in OA No. 85/2006 and OA No. 4256/2011 of the Principal Bench of the Tribunal, in which the issue raised by the applicant has been decided in favour of the similarly placed employees, have been enclosed to the Rejoinder.

7. We have heard the learned counsels for the parties and carefully perused the pleadings of the parties on record. The question to be decided in the case is whether the averment of the respondents that the applicant cannot be allowed the benefit which was allowed to other similarly placed employees on the basis of the orders of the Tribunal/Court, is legally correct. It is not disputed that similarly placed employees had moved the Tribunal in OA No. 85/2006 and OA No. 4256/2011 and after examination of all relevant facts and issues, it was decided by the Tribunal that the employees are entitled to have their period of service as LDC (in lieu of Combatant) for the purpose of the ACPS. This finding of the Tribunal has been upheld by Hon'ble High Court and Hon'ble Apex Court.

8. In the OA No. 85/2006, the employee concerned was appointed as LDCC w.e.f. 28.5.1987 and was absorbed in regular establishment w.e.f. 28.5.1989. He was granted first ACPS benefit on 28.5.2001 after completion of 12 tears after regular service. After examining different judgments, it was held in that OA as under:-

**“9. Even though the applicant’s reliance on this does not meet with the facts of the instant matter where regular service is the stipulation for consideration for ACP Scheme, we agree that the applicant’s case is supported to the extent that Hon’ble Apex Court had considered the service rendered while being in Reserve Training Pool (RTP) without being given regular appointment in Department of Posts, the service so rendered even as RTP could be counted for TBOP Scheme eligible after 16 years of service. Applying the ratio of the orders cited supra and also keeping in view the fact that the respondents have nowhere given any reason for excluding the service rendered by the applicant as LDC (in lieu of Combatant) and the applicant having claimed that the service he had rendered between 28.5.1987 and 28.5.1989 would count for all purposes, including Pension, which has not been countered by the respondents, we are convinced that the respondents are taking an arbitrary stand in disqualifying the service rendered by the applicant as LDC (in lieu of Combatant) and hence the applicant has made out a convincing case for the relief sought for. We, therefore, direct the respondents to take into account the service rendered by the applicant between 28.5.1987 and 28.5.1989 as regular service and as he is eligible for the first ACP w.e.f. 9.8.1999, to issue necessary orders to that effect within a period of eight weeks from the date of receipt of a copy of this order.”**

9. The Principal Bench of the Tribunal in OA No. 4256/2011 has referred to the decisions of the Tribunal in similar cases including in OA No. 85/2006 and vide order dated 29.11.2011 (Annexure RA-2 to the Rejoinder) directed the respondents to consider the case of the concerned employee in the light of the decisions in OA No. 85/2006, OA No.

954/2006 and OA No. 2089/2008 and take an appropriate decision on the representation of the employees concerned.

10. We take note of the fact that the applicant has not submitted any representation or raised her claim otherwise immediately after 12.1.2008 as no such averment has been made by the applicant in the OA. It is stated in para 6 of the OA that the applicant could not approach the departmental authorities in view of the order dated 12.9.2012. The reason for not submitting any representation prior to 12.9.2012 has not been explained by the applicant. However, in view of the order dated 12.9.2012, there was justification for the applicant for not submitting any representation after 12.9.2012.

11. In the facts and circumstances as discussed above and following the order dated 5.4.2007 of Madras Bench of this Tribunal in OA No. 85/2006 (Annexure RA-1 to the Rejoinder), we direct the respondents to consider the benefit of first ACPS to the applicant with effect from 12.1.2008 as per the guidelines pertaining to ACPS after counting 2 year service period as LDC (in lieu of Combatant) of the applicant for the purpose of the ACPS. In case the applicant will be found eligible for the upgradation benefit under ACPS w.e.f. 12.1.2008 as per the rules, then the applicant's pay shall be notionally fixed till 11.9.2012 without any arrear of pay since the applicant failed to submit any representation to the authorities claiming such benefit in view of the orders of this Tribunal in similar cases and arrears of pay shall be allowed to the applicant from 12.9.2012 till 30.11.2012, since the applicant was promoted as senior clerk w.e.f. 1.12.2012 and since on 12.9.2012, the respondents issued a general order dated 12.9.2012 (Annexure A-1 to the OA) with a decision not to entertain the representation unless the employee concerned approached the Court. The respondents are directed to comply with this order within three months from the date of receipt of a copy of this order.

12. The OA is allowed in terms of the directions in para 11 above. No costs.

**(Rakesh Sagar Jain)**  
Member (J)

**(Gokul Chandra Pati)**  
Member (A)

/pc/