

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

Pronounced on : 02.05.2019

Reserved on : 14.02.2019

**CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS. P. GOPINATH, MEMBER(A)**

OA No. 060/00544/2017

Neelam Lakahnpal w/o Sh. Deepak Lakahnpal, aged 59 years, working as Senior Draftsman in the office of Director, Census Operation, Haryana Jaganana Bhawan, Sector 19, U.T. Chandigarh.

...Applicant

BY ADVOCATE: **SH. D.R. SHARMA**

Versus

1. Union of India through Secretary, Ministry of Home Affairs, North Block, New Delhi – 110 011.
2. The Registrar General and Census Commissioner, Government of India, Ministry of Home Affairs, 2/A, Man Singh Road, New Delhi – 110 011.
3. Director, Census Operations, Haryana, Jaganana Bhawan, U.T. Chandigarh, Sector 19, Chandigarh.

...Respondents

BY ADVOCATE: **SH. SANJAY GOYAL**

ORDER

BY MRS. P. GOPINATH, MEMBER(A):-

1. The applicant is before us with a prayer to treat her ad hoc service as Draftsman from 26.12.1980 upto 28.02.1984 as regular service.

2. We have heard the learned counsel for the parties and have carefully perused the pleadings on record.

3. The applicant has produced and relied upon Annexure A-24, a judgement by Hon'ble Punjab and Haryana High Court in CWP No. 23485 decided on 25.07.2016 titled Union of India & Anr.

Vs. Central Administrative Tribunal, Chandigarh Bench, Chandigarh and Others wherein the respondents No. 2-10 had prayed for counting their daily rated LDC service from the date of their initial engagement and to add the same to the regular service for the purpose of financial upgradation under ACP. The Hon'ble High Court in the above judgement, allowed the relief to the respondents (applicants in OA in Tribunal) and held as follows:-

“6. Union of India filed Special Leave Petition against the decision of Bombay High Court which was dismissed by the Supreme Court vide order dated 16.07.2015 on the ground of delay. Resultantly, the order passed by Mumbai Bench of the Tribunal and the Bombay High Court have attained finality.

7. Similar issue had also been adjudicated by this Court in CWP No. 22139 of 2015 (Union of India and others v. CAT Chandigarh and others) decided on 23.5.2016 where this Court while dismissing the writ petition filed by Union of India had noticed as under:-

“6. It appears to us that since the claim of similarly placed employees, which was accepted by the Tribunal's co-ordinate Bench at Mumbai, has attained finality and they have got the financial upgradation under ACP/MACP by taking into account their service from the date(s) of initial engagement, any different view by this Court would unwittingly lead to discrimination amongst the similarly placed employees.

7. Besides that, the Tribunal has rightly on consideration of the facts held that the initial engagement of respondent was on being sponsored by Employment Exchange and their services were subsequently 4 of 6 regularized by the respondents. Since it was not a case of back-door entry as they were appointed through competitive process, such appointment cannot be termed irregular.

8. The Bombay High Court relied upon the decision of the Hon'ble Supreme Court in State of Maharashtra & Ors. vs. Uttam Vishnu Pawar (2008) 2 SCC 646, taking note of its previous decisions in the case of Dwijen Chandra Sarkar & Anr. vs. Union of India &

Ors., (1999) 2 SCC 119, Union of India vs. V.N. Bhat (2003) 8 SCC 714, APSEB vs. R.Parthasarathi (1998) 9 SCC 425, Scientific Advisor to Raksha Mantri vs. VM Joseph (1998) 5 SCC 305 and Renu Mullick vs. Union of India (1994) 1 SCC 373 to hold that the very purpose of ACP/MACP is to relieve frustration on account of stagnation and the scheme does not involve the actual grant of promotional post to the employees but merely monetary benefits in the form of next higher grade subject to fulfillment of qualifications and eligibility criteria. Thus, the benefit of service rendered by the respondents before their regular absorption, if counted, neither it affects the seniority of directly recruited other members of the cadre nor it affects them in terms of the promotional aspirations. The respondents rather would continue to retain the same status except monetary benefits admissible in the higher grade.”

4. It is also stated by the applicant that counting of ad hoc service of the applicant in this OA for the purpose of ACP/MACP will not affect the seniority or promotion of the other employees. Moreover the case of the applicant is better footed as she was an ad hoc appointee and was granted regular increments from time to time during her ad hoc service.

5. The respondents bring to our notice the order of the Tribunal in OA No. 060/01062/2016 titled Ashwani Kumar Vs. UOI & Ors. decided on 25.10.2018 wherein in para 27, the Bench had pronounced that ad hoc service cannot be counted for ACP/MACP.

6. The coordinate bench of the Tribunal at Calcutta had passed an order in OA No. 351/00148/2011 and two other similar matters on 15.02.2018 on a similar matter having a bearing on this OA. In this OA, applicants were seeking counting of their service rendered on ad hoc basis before the regularization for the purpose

of ACP and pensionary benefits. The Bench while delivering the order highlighted the CAT Calcutta larger Bench order in the same matter which was upheld by the High Court and by the Apex Court. Whereas this judgement has been drawn from various judgements of the Apex Court, paras 11 & 13 which adequately cover the case under consideration in this OA are reproduced as below:-

“11. In the case of **State of Haryana V. Haryana Veterinary & AHTS Association & Anr. reported in 2000 (8) SCC 4**, Their Lordships have analyzed the expression of “regular service” and have observed that services rendered on the basis of ad hoc appointment made dehors the recruitment rules although without interruption followed by regular appointment, held, not includible. In the instant case also the service was on ad hoc basis and cannot be treated as regular basis till the appointments were regularized subsequently.

12. xxxxxxxxxxxxxxxxxxxxxxxxx

13. In view of catena of the decisions and authoritative pronouncement of Hon'ble Supreme Court there is hardly any scope for this Bench to take a different view, contrary to views expressed by highest Court of the land. So the pivotal issue raised at the outset can be answered to the effect that service rendered by the applicants on ad hoc basis cannot be treated as regular service for the purpose of ACP. Hence, the reference is answered accordingly. Since there is hardly any matter left to be adjudicated in the original applications, to avoid further delay, we dismiss all the OAs having no merit as the applicants were fighting on a wrong notion not oblivious of their right and legal proposition and apart from the legal backdrop, there is nothing wrong in the 1999 circular of DOPT calling for interference at this end which is followed uniformly throughout India for the last 15 years. In the peculiar circumstances no costs is awarded.”

7. The issue in this OA is counting ad hoc service for the purpose of ACP/MACP and since an order of the five judge larger bench of the Tribunal covers this matter which has been upheld by the Hon'ble High Court and Hon'ble Supreme Court, this Bench would also go by the same pronouncements. The service rendered on ad hoc basis cannot be counted for the purpose of ACP and

MACP. OA, being turned out as devoid of merits, is dismissed. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:
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