

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 122 of 2013

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Ananga Kumar Samanta, aged about 53 years, S/o Late Krushna Chandra Samanta, At/Post – Kalarabanka, Via- Raghunathpur, Dist. – Cuttack, presently working as PA, Circle Piring Unit, O/O CPMG, Bhubaneswar – 751001.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary cum Director General of Posts, Dak Bhawan, New Delhi – 110116.
2. Chief Post master General, Odisha Circle, At/PO-Bhubaneswar, Dist.- Khurda-751001.
3. Director of Postal Services (HQRS), O/o CPMG, At/PO-Bhubaneswar, Dist.- Khurda- 751001.
4. Senior Postmaster, Cuttack, GPO, At/Post – Cuttack GPO, Dist. – Cuttack, 753001.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.D.K.Mallick, counsel

Heard & reserved on : 24.1.2019

Order on : 4.2.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

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

“In view of the facts stated above, it is humbly prayed that Hon'ble Tribunal may be graciously be pleased to quash Annexure A/8, direct the respondents to fix the TBOP & MACP-II scale of pay after taking into consideration the period of service rendered in Departmental Canteen of Cuttack GPO & antedate the TBOP and MACP-II after taking into consideration of service rendered in Departmental Canteen as per DOPT circular dated 15.7.2000.”

2. The applicant was working initially as Assistant Manager in the Departmental Canteen under the respondents from 1.7.1983 to 17.5.1989 and he was retrenched from service on 18.5.1989. Thereafter he moved this Tribunal in OA NO. 413/1988 which was dismissed (as stated in para 4.4 of the OA) with observation of the Tribunal that in view of the precarious situation of the applicant due to termination of his service and keeping in view his qualifications and experience the respondents may consider. Accordingly the

applicant was appointed as LDC w.e.f. 1.1.1992 and subsequently he was posted as PA w.e.f. 17.8.1991.

3. The present grievance of the applicant is to count his previous service as Assistant Manager of the Departmental Canteen to the present service for the purpose of TBOP and MACP. The applicant has filed a representation dated 22.2.2010 (Annexure A/6) which was not considered for which he filed another OA No. 559/2010 which was disposed of by the Tribunal vide order dated 24.9.2010 (Annexure A/7) by which the matter was remitted to the respondents to consider the grievance of the applicant and pass a reasoned order. Accordingly the reasoned order dated 23.7.2011 (Annexure A/8) has been passed by the respondents rejecting the case of the applicant.

4. The grounds taken in the order dated 21.7.2011 are as under :

(i) The applicant was appointed as LDC/PA in relaxation of normal Recruitment Rules and age w.e.f. 13.1.1992 in pursuance to the order of the Tribunal and there was no direction from the Tribunal for counting of previous service for the purpose of grant of TBOP/BCR.

(ii) It was decided by the Government to treat the employees of the Canteen as Government servant w.e.f. 1.10.1991 but the applicant was already retrenched from service on 18.5.1989. Hence as on 1.10.1991 he was not an employee of the Canteen. So he cannot be treated as Government servant for his previous engagement.

(iii) The other cases cited by the applicant related to the employees who were in Central Government Surplus Cell and appointed consequent upon the abolition of the Project in which they were engaged. The case of the applicant is different from the cases cited.

5. The following grounds have been taken by the applicant :

(i) As per the instruction of the DG P&T dated 25.7.2000 this period of 5 years 7 months 22 days in Departmental Canteen should be counted for TBOP/ACP/MACP.

(ii) since other staff have been considered, non-consideration of his case is violative of Article 14 and 16 of the Constitution of India.

6. The counter has been filed by the respondents mainly reiterating the grounds mentioned in the impugned speaking order. The copy of the OM dated 29.1.92 by which Canteen employees were treated as Government servant w.e.f. 1.10.1991 has been also enclosed. The circular dated 25.7.2000 of the DG P&T which has been referred to by the applicant has also been enclosed as Annexure R/2 and it states as under :

“While implementing the ACP Scheme, following guidelines may be kept in view:

- (i) For the purpose of determining the eligibility for consideration of financial upgradation of Canteen employees under the ACP Scheme, the service rendered by a Canteen employee will be reckonable from 26.9.1983 or the actual appointment in regular pay scales, whichever is later.
- (ii) In accordance with the provision of ACP Scheme, every non-statutory Canteen/Tiffin Room employee will be eligible for a minimum of two financial upgradations in the entire service if he has not been offered two vacancy bound promotions. First and second financial upgradations will be considered for the eligible staff after completion of 12 years and 24 years of regular service respectively subject to the parameters prescribed in this regard."

7. Heard learned counsels for both the parties and considered the materials on record. Admittedly the applicant was out of service from 1989 till 1992 when he was posted as LDC by the respondents. Hence his service from 1.7.1983 till 17.5.1989 in the Departmental Canteen cannot be treated as Government service in the light of the OM dated 29.1.1992 (Annexure R/1). As per DG P&T circular dated 25.7.2000 it is seen that such circular is applicable for grant of ACP/MACP benefit to the Canteen employees. So it will be of no help to the case of the applicant. Had he continued as Canteen employee then this benefit would have been available to him. When he was appointed as LDC in 1992 he accepted it without any objection. Further no rule has been cited by the applicant in support of his contention.

8. In view of the clear position that for the period as claimed by the applicant, he was not in Government service, since the Departmental Canteen staff were treated as Government servant w.e.f. 1.10.1991 and there is a discontinuity in service of the applicant after 18.5.1989 till 1.1.1992 when he was re-engaged, his past service in the Departmental Canteen cannot be counted for the purpose of TBOP/ACP/MACP benefit as per the guidelines.

9. Therefore the OA lacks merit and is liable to be dismissed and is accordingly dismissed. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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