

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00957/2018

Friday, this the 25th day of January, 2019

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

K.S.Sindhu,
W/o.K.G.Ramesh Babu,
Asst. Superintendent,
Regional Passport Office, Cochin,
Panampilly Nagar, Kochi – 682 035.
Residing at Kolothura House, H.No.XX/142-D,
Siraj Nagar, Onnodimoola Road,
Kodikuthimala, Aluva – 683 101. ...Applicant

(By Advocate – Mr.Shafik M.A.)

v e r s u s

1. Union of India
represented by Secretary to the Government of India,
Ministry of External Affairs, New Delhi – 110 001.
2. The Chief Passport Officer & Joint Secretary (CPV),
Ministry of External Affairs, New Delhi – 110 001.
3. The Regional Passport Officer,
Regional Passport Office,
Panampilly Nagar, Kochi – 682 035. ...Respondents

(By Advocate Mr.N.Anilkumar, SCGSC)

This Original Application having been heard on 21st January 2019, the Tribunal on 25th January 2019 delivered the following :

O R D E R

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

O.A is filed by Smt.K.S.Sindhu who is presently working as an Assistant Superintendent at Kochi. She had commenced her service as a Lower Division Clerk (LDC) on daily wages on being sponsored by the

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Employment Exchange with effect from 17.4.1990. She was regularized as LDC at Passport Office, Trivandrum with effect from 22.4.1997. She has filed this O.A aggrieved by denial of 1st financial upgradation under Assured Career Progression Scheme (ACP) with effect from 17.4.2002 on completion of 12 years of service and the 2nd financial upgradation with effect from 17.4.2010 under Modified Assured Career Progression Scheme (MACP) on completion of 20 years of service with all consequential benefits arising out of respondents' own order granting regular appointment with effect from 17.4.1990 as Lower Division Clerk (LDC). The reliefs sought by the applicant in the O.A are as follows :

1. To call for the records relating to Annexure A-1 to Annexure A-13 and to declare that the applicant is entitled to be granted ACP Benefits with effect from 17.4.2002 consequent to Annexure A-2, Annexure A-3, Annexure A-4 and Annexure A-11 orders and denial of the same is illegal, arbitrary and violative of Articles 14 of the Constitution of India.
2. To direct the respondents to grant 1st ACP upgradation of pay of the applicant as per ACP Scheme, with effect from 17.4.2002 and 2nd MACP with effect from 17.4.2010 with all consequential refixation and arrears of such refixation as has been granted to others like in Annexure A-11 with 18% interest.
3. To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case.
4. To grant the costs of this Original Application.

2. As grounds, the applicant submits that she is similarly placed as the applicants in O.A.No.523/2004 and O.A.No.1027/2011. In support of her case she has also produced Annexure A-11 Office Order dated 31.10.2017 whereby pursuant to the orders of this Tribunal in O.A.No.1027/2011, which was confirmed by Hon'ble High Court and Hon'ble Supreme Court, the applicants therein have been granted 1st financial upgradation under ACP Scheme with effect from the date of their initial entry with all consequential benefits.

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3. The respondents in their reply statement submitted that the applicant has rendered regular service in the post of LDC with effect from 22.4.1997 and since she has been promoted to the next higher grade of an UDC on 27.11.2008, before completion of 12 years service in the grade of LDC, she is not eligible for grant of benefits under the ACP Scheme. It is stated that any prior service rendered as a casual employee cannot be counted as regular service and therefore also cannot be counted for the purpose of the ACP Scheme. For the purpose of granting ACP the applicants' length of service should be counted from the date of regularization in the post of LDC and not from the date of their initial engagement as Daily Rated Clerks. Similarly, 'regular service' for the purposes of the MACPS shall commence 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. Service rendered on adhoc/contract basis before regular appointment or pre-appointment training shall not be taken into reckoning. Hence the applicant will be eligible for 2nd MACP benefits on completion of 20 years from the date of her regular appointment to the post of LDC.

4. This Tribunal had time and again through various orders had ordered in favour of persons such as the applicant that for the purpose of ACP benefit, the services of the applicant from the initial date of engagement should be considered which had been affirmed by the Hon'ble High Court and Hon'ble Supreme Court. O.A.No.1027/2011, O.P.(CAT) No.2383/2013 and S.L.P.No.10058/2014 refers. Hence we have no hesitation to hold that the decisions referred to above governs the field. Accordingly the O.A is

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allowed. Keeping in view the earlier orders referred to above on the subject, we direct the respondents to grant the benefits of 1st financial upgradation under the ACP Scheme with effect from 17.4.2002 and 2nd financial upgradation under the MACP Scheme with effect from 17.4.2010 with all consequential benefits arising therefrom within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated ts the 25th day of January 2019)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00957/2018

1. Annexure A-1 - True copy of the order No.V.IV/578/9/97 dated 10.6.1997 of the Under Secretary (PVA) of the 2nd respondent.
2. Annexure A-2 - True copy of the order No.V.IV/578/9/97 dated 1.12.2006 issued by the A.O (PV-IV) of the 2nd respondent.
3. Annexure A-3 - True copy of the order dated 15.1.2009 of this Hon'ble Tribunal in O.A.No.758/2007.
4. Annexure A-4 - True copy of the Office Order No.5(77)/AD/TVM/93 (Vo.II) dated 11.1.2011 issued by the 3rd respondent.
5. Annexure A-5 - True copy of the order No.CDR-II/560/1/2010 dated 16.5.2011 issued by the Under Secretary (PVA) of the 2nd respondent.
6. Annexure A-6 - True copy of the representation dated 9.10.2013 submitted before the 3rd respondent.
7. Annexure A-7 - True copy of the order dated 8.2.2013 of this Hon'ble Tribunal in O.A.No.1027/2011.
8. Annexure A-8 - True copy of the judgment dated 9.7.2013 of the Hon'ble High Court in O.P.(CAT) No.2383/2013.
9. Annexure A-9 - True copy of the order No.CDR-II/441/02/2014 dated 19.6.2014 issued by the 2nd respondent.
10. Annexure A-10 - True copy of the judgment dated 11.1.2017 of the Hon'ble Supreme Court in SLP No.10058/2014.
11. Annexure A-11 - True copy of the Office Order No.CDR-II/441/37/2011 dated 31.10.2017 issued by the Deputy Passport Officer.
12. Annexure A-12 - True copy of the representation dated 26.12.2017 submitted by the applicant.
13. Annexure A-13 - True copy of the representation dated 10.4.2018 submitted by the applicant.
