

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00408/2016

Date of Order: This, the 01st day of February 2019

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, ADMINISTRATIVE MEMBER

1. Shri Lalit Gogoi
PN-2766, UDC.
2. Smti. Anjali Borah
PN-2732, UDC.
3. Shri Biswadev Sharma
PN-2733. LDC(S).
4. Shri D.A. Parmar
PN-2618, Accountant.
5. Shri Indrajit Kalita
Pn-8016, LDC(S).
6. Md. Khalil Uddin Laskar
PN-2689, LDC(S).
7. Girindra Nath Kalita
PN-2735, LDC.
8. Jibeswar Talukdar
PN-2855, LDC.

(Applicant no. 8 is presently posted under the establishment of respondent no. 3 and the other applicants are presently posted under the establishment of respondent no. 4)

...Applicants

By Advocates: Mr. M. Chanda, Mrs. U. Dutta and Ms. S. Begum

-Versus-

1. The Union of India
Represented by the Secretary
To the Govt. of India
Ministry of Defence, Canteen Stores Department
New Delhi – 110001.
2. The General Manager
Canteen Stores Department
“Adelph”, 119 M.K. Road
Mumbai – 400020.
3. The Regional Manager (East)
Canteen Stores Department, Narengi
P.O. – Satgaon, Guwahati – 781027.
4. Area Manager
Canteen Stores Department, Missamari
P.O. – Missamari, Pin – 784506, Missamari.

...Respondents

By Advocate: Mr. S.K. Ghosh, Addl. CGSC

ORDER

MANJULA DAS, MEMBER (J):

By this O.A., applicants prays for a direction upon the respondents to extend the benefit of financial upgradation under ACP/MACP Scheme counting the services of the applicants from their initial date of engagement as daily rated LDC. They are also prays for restoration of their seniority taking into account their services from the date of their initial appointment for the purpose of financial upgradation under the MACP Scheme with all consequential service benefits.

2. It was submitted by Mr. M. Chanda, learned counsel appearing on behalf of the applicants that all the applicants were initially appointed as daily rated LDC on different dates on temporary basis in canteen Stores Department. However, subsequently their services were regularized at the initiative of the respondent authority or following the court cases. According to Mr. Chanda, all the applicants have rendered more than 3 to 11 years of service as daily rated LDC. However, the temporary service rendered by the applicants as daily rated LDC has not been taken into consideration for the purpose of seniority and or for the purpose of extending the benefit of ACP/MACP.

3. Mr. Chanda submitted that similarly situated employees approached before the Central Administrative Tribunal, Mumbai Bench vide O.A. No. 193/2011 and 74 O.As for counting the services from their initial date of engagement for the purpose of financial upgradation under the ACPS. The Central Administrative Tribunal, Mumbai Bench while disposed of the O.A. preferred by similarly situated employees, directed the respondents to count the services of the applicants therein rendered by them from the initial date of their engagement for ACP benefits. Against the order of the CAT, Mumbai Bench, the respondent authorities therein approached before the Hon'ble High Court of Judicature at Bombay. However, the Hon'ble High Court upheld the judgment passed by the Central

Administrative Tribunal, Mumbai Bench by dismissing the Writ Petition filed by the respondent authorities.

4. Mr. Chanda submitted that in compliance of the common order passed by the CAT, Mumbai Bench dated 12.09.2011, the respondent authorities vide letter No. 3/Pers/A-1/(1146)/876 dated 16.10.2015 instructed all the DGMs/Area Managers of CSD Depots of different regions to extend the benefit of ACP/MACP by taking into account the past services rendered by the applicants prior to their regularization. It was further directed that the said order shall be complied with within a period of three months from the date of receipt of the order and accordingly, services of 128 employees were being regularized. With reference to the H.Q. letter dated 16.10.2015, the applicants submitted their applications to the General Manager, Canteen Stores Department, Mumbai for regularization of their services for the purpose of financial upgradation or promotion under MACP Scheme w.e.f. 10.08.1981 or from the respective date of temporary appointment. The office of the Area Manager, CSD Depot, Missamari vide its letter dated 09.12.2015 forwarded their applications to the Regional Manager (East) along with documentary proof for regularization of daily rated LDCs working in the department since 1978-1988 for further necessary action. Again they submitted reminders on 11.08.2016.

5. Mr. Chanda further submitted that similarly situated employees earlier approached before the CAT, Chandigarh Bench vide O.A. No. 1609/HR/2013 for extending the benefit of services rendered by the applicants as daily rated LDC, prior to the date of regularization for the purpose of grant financial upgradation under the ACP Scheme and to grant the said benefit with release of consequential arrears. The CAT, Chandigarh Bench vide order dated 15.05.2014 allowed the said O.A. and directed the respondents therein to complete the action regarding review of the cases of the applicants with respect to the date from which ACP/MACP benefits are to be allowed to them after counting the period of service rendered from the date of their initial engagement in the service of the respondent department. According to Mr. Chanda, the respondent authority implemented the said order of Chandigarh Bench towards the applicant.

6. Pursuant to the recommendation of the 6th Central Pay Commission, the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, DOPT vide its Memorandum dated 19.05.2009 introduced one Modified Assured Career Progression Scheme (in short MACP) which provides for grant of financial upgradation to an employee on completion of his/her 10, 20 and 30 years of service respectively whereas provisions in the earlier ACP Scheme dated 09.08.1999 was for two financial upgradations on

completion of 12 and 24 years of service respectively. According to Mr. Chanda, all the present applicants were working as daily rated LDCs at CSD Depot during the period from 1978-1988. As such, all of them have completed more than 30 years of service. If their services of daily rated LDC/Casual Mazdoor rendered by them from the initial date of engagement by adding the same with their regular service as LDC/Regular Mazdoor is taken into account, they are now entitled to get the benefit of 1st/2nd/3rd financial upgradation on completion of their required years of service as provided under the ACP/MACP Scheme dated 09.08.1999 and 19.05.2009, since they had completed the said stipulation of required numbers of years.

7. Mr. Chanda vociferously submitted that when the issue is settled by the CAT, Bombay Bench and Chandigarh Bench in O.A. No. 1609/HR/2013, as such, denial of the similar benefit to the similarly situated applicants is against the principle of equality. Accordingly, Mr. Chanda prays for similar benefits in the case of the present applicants also.

8. On the other hand, Mr. S.K. Ghosh, learned Addl. CGSC appearing on behalf of the respondents submitted before the BAR that it is a covered case with applicants of CAT, Bombay Bench who had earlier approached by filing vide O.A. No. 193/2011 and 74

O.As. As such, he has no objection if similar order is passed in the present case also.

9. Heard Mr. M. Chanda, learned counsel for the applicants and Mr. S.K. Ghosh, learned Addl. CGSC for the respondents. Perused the pleadings and all the decisions relied upon.

10. The issue is no longer res-integra as the Coordinate Bench of CAT Mumbai Bench had disposed of 74 OAs allowing the claim of persons similarly situated to the applicants to count the service rendered by them from the initial date of their engagement for ACP benefits .

11. The decision of the Tribunal was upheld by the **Hon'ble High Court of Judicature at Bombay** vide order dated **24.07.2013** in **WP(L) No. 1202 of 2012**. The relevant portion of the order of the Hon'ble High Court is reproduced here as under:-

"In the light of the aforesaid judgments of the Supreme Court, we are of the opinion that the view taken by the CAT, Mumbai Bench does not call for any interference, particularly since limited relief of counting the service from initial date of engagement for the purpose of financial upgradation under ACPS has been granted to the respondent employees by taking into consideration the peculiar facts and circumstances of the case.

In the result, the petitions are dismissed. Rule in each of the petitions is discharged. There shall, however, be no order as to costs."

12. On identical issue of LDCs on daily rated basis who performed their duties in the Canteen Stores Department under the

Administrative Control of Regional Manager (West)/(North), Ministry of Defence, Govt. of India, the CAT, Chandigarh Bench has also decided the matter vide judgment and order dated **15.05.2014** in **OA No. 1609/HR/2013 (Harbhajan Singh & ors. Vs. Union of India and Ors.)**. Relevant portion of the order of the Tribunal is reproduced here as under:-

“We have given our thoughtful consideration to the matter. The issue is no longer res-integra as the Coordinante Bench of CAT Mumbai had disposed of 74 OAs allowing the claim of persons similarly situated to the applicants to count the service rendered by them from the initial date of their engagement for ACP benefits and the Bombay High Court had dismissed the judicial review filed in this regard by the respondents through General Manager, CSD Mumbai who is respondent No. 2 in the present O.A. also. The Courts have held time and again that similarly situated employees have to be allowed the benefit of judicial pronouncements and individual claimants should not have to approach the Tribunal/Courts seeking the same relief over and over again. It is also observed that a similar matter had been decided through order dated 2.8.2013 in OA No. 1439/PB/2012, but it appears that the respondents are bent upon opposing the claims of similarly situated employees seeking identical relief. This attitude of the respondent department is to be deprecated in no uncertain terms.

In view of the foregoing discussion, the present OA is allowed and the respondents are directed to complete the action regarding review of the cases of the applicants regarding date from which ACP/MACP benefits are to be allowed to them after counting the period of service rendered by the applicants from the date of their initial engagement in the service of the respondent department.”

10. In view of the above, respectfully following the decisions of the Coordinate Bench of Central Administrative Tribunal as well as **Hon'ble High Court of Judicature at Bombay**, we direct the respondents to decide the present issue in accordance with aforesaid precedents after examining the case of the applicants and complete the action regarding review of the cases of the applicants regarding date from which ACP/MACP benefits are to be allowed to them after counting the period of service rendered by the applicants from the date of their initial engagement in the service of the respondent department.

11. Respondents are further directed to carry out the aforesaid direction within a period of four months from the date of receipt copy of this order.

12. With the above directions, O.A. stands disposed of accordingly at the admission stage. No order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)