

**Central Administrative Tribunal
Madras Bench**

OA/310/01065/2014

Dated the 6th day of September Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

Smt.Susamma Koshy,
SSG, INS Rajali,
Naval Air Station,
Arakonam. .. Applicants
By Advocate M/s.V.Manoharan

Vs.

1. The Union of India, rep. by
Air Officer Personnel,
Air Headquarters,
Vayu Bhawan,
New Delhi 110 106.
2. The Union of India, rep. by
The Flag Officer Commanding-in-Chief,
Headquarters Eastern Naval Command,
Visakhapatnam 530 014.
3. The Commander in Chief,
Head Quarters, Andaman & Nicobar Command,
Port Blair.
4. The Commanding Officer,
INS Rajali,
Arakonnam 631006. .. Respondents

By Adovacte **Mr.S.Padmanabhan**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OA is filed seeking the following relief:-

“To call for the records of the 2nd respondent by its proceedings No.274/7C/01 dated 04.2.2014 and quash the same and directing to the respondents to grant ACP/MACP financial up-gradation to the applicant reckoning her date of initial appointment i.e. 14.12.1982 instead of 01.3.1987 with all attended financial benefits.

To pass such other or further orders may deem fit and proper in the circumstances of the case and thus render justice.”

2. The case of the applicant is that she was selected and appointed as Senior Stenographer (SSG) w.e.f. 14.12.1982 as a temporary casual worker. Subsequently the respondents had absorbed the applicant as permanent employee w.e.f. 01.3.1987. She was also granted the benefits like annual increment, annual leave etc. with regular employees. She gave representation on 15.7.13 to the respondents requesting them to reckon her date of initial appointment as 14.12.1982 instead of 01.3.1987 for the purpose of granting ACP and MACP benefits. But the respondents had not passed any order on her representation. So she has filed this OA.

3. According to the applicant, as per the 5th Central Pay Commission (CPC), the Government has implemented ACP Scheme in order to facilitate financial up-gradation to avoid stagnation by order dated 09.8.1999. After implementation of the 6th CPC the above Scheme was modified as MACP by order of the Government of India dated 19.5.2009 with retrospective effect from 01.9.08. As per the said

Scheme, government employees will be eligible for 3 financial up-gradations. According to the applicant, one K.V.Thulasiamma had filed an OA before the CAT, Calcutta Bench for counting her service from the date of initial appointment for the benefit of ACP Scheme. The said OA was allowed and according to her, the respondents had implemented the same. The said Thulasiamma is junior to her and she seeks the same consideration in her case. The applicant had filed Annexure A3 representation dated 13.7.2011 before the 3rd respondent for implementation of the decision of the CAT, Calcutta Bench in her case also. Subsequently she was transferred to 4th respondent in the month of September 2012. So she submitted Annexure A5 Appeal dated 15.7.2013 to the 2nd respondent through proper channel. A similar case came up before this Bench as OA 1097 and 1100 of 2012 (Annexure A9) and the Hon'ble High Court of Karnataka had also passed similar orders. However, the respondents on 04.2.2014 has intimated that they are not ready to comply with the order.

4. The respondents filed a detailed reply stating that the applicant is not entitled to get her casual services as it does not form regular service as contemplated in the ACP and MACP Schemes. She is entitled to get her 'regular service' alone for consideration for ACP and MACP Schemes. As per the ACP Scheme, regular services for the purpose of granting ACP Scheme is interpreted to mean the 'eligibility service' counted for the regular promotion in terms of relevant

Recruitment/Service Rules. The clarification issued in OM dated 10.2.2000 (Annexure R5) clarified that the benefits of past service shall not be extended to temporary status employees after their regularization for the purpose of granting ACP. According to the respondents, the CAT, Hyderabad Bench in its order dated 08.4.99 in OA 938/87 has revered its earlier judgment relying on the judgment of the Hon'ble Supreme Court in CA No.9922/95 and the Full Bench judgment dated 01.7.94 and it was directed that seniority will be counted from the date of regularization against the sanctioned post. According to the respondents, the applicant is not entitled to get the relief.

5. We have heard the counsel for the applicant and the counsel for the respondents. Eventhough the applicant would submit that she is relying upon the case of one K.V.Thulasiamma who had filed OA before the CAT, Calcutta Bench for supporting her case that she is entitled to get the benefit from the initial date of appointment, the decision is not at all produced before this Tribunal. The applicant has produced a copy of the judgment in OA 1097 and 1100 of 2012 as Annexure A9. On a perusal of the said judgment, it can be seen that the said order was passed on the basis of CA No.3250/2006 of the Hon'ble Supreme Court in *Commissioner and Secretary to the Govt. of Haryana & Ors. v. Ram Sarup Ganda and Others*. The operative portion mentioned in the judgment is not having any bearing with the facts said in this application. It is not clear whether the facts of the said judgment is

similar to the one as the applicant. The applicant's claim is that she is entitled to get her casual service w.e.f. 14.12.82 for consideration of ACP and MACP Schemes. The said judgment produced as Annexure A9 cannot be relied upon for coming to a finding in the said matter.

6. It is the burden of the counsel for the applicant to produce all rules and decisions in support of his case. Eventhough the applicant mainly relies upon the decision of the CAT, Calcutta Bench, she has not cared to produce the said judgment for consideration. As per the OM of the Government of India No.35034/1/97-Estt(D) dated 09.8.99 (Annexure R4) it has clearly given the explanation how to consider the service for calculating ACP Scheme. In para 3.2 of the said OM it is clarified the regular service as follows:-

“'Regular Service' for the purpose of the ACP Scheme shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant Recruitment/Service Rules.”

In view of the above direction in the Scheme, it is not clear how the casual service rendered by the applicant can be considered for giving ACP Scheme and for consideration of MACP Scheme as claimed by the applicant. In the absence of any specific decision to support the case of the applicant either by the CAT or High Court, we are not in a position to extend the benefit to the applicant. The case of K.V.Thulasiamma was not at all produced in this case and we are not in a position to appreciate whether the facts are similar as in the case of the applicant. So, we find

that the applicant has miserably failed to put forward a reasonable and cogent case for consideration. She has failed to make out a *prima facie* case in her favour. Hence the OA lacks merit and is liable to be dismissed. OA is dismissed accordingly. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

06.09.2019

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