

CENTRAL ADMINISTRATIVE TRIBUNAL**CHENNAI BENCH****OA/310/00863/2015****Dated 26th, the day of August, 2019****PRESENT****Hon'ble Mr. P. Madhavan, Member (J)****Hon'ble Mr.T.Jacob, Member (A)**

N.Mahadevan,
S/o. O.K.Natesa Mudaliar,
No 49/50, F-2, Masudhi Street,
Jaladian Pet,
Chennai 600 100.

..... Applicant

By Advocate M/s R. Prem Narayan

AND

- I. The Union of India rep by
The Director General of Employment & Training,
Shram Shakthi Bhavan,
New Delhi 110001;
2. The Principal,
Central Training Institute for Instructors,
C.I.T. Campus,
Gunidy,
Chennai-600032.

....Respondents

By Advocate Mr. G. Dhamodran



ORDER

(Pronounced by Hon'ble Mr.T. Jacob, Member(A))

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

"to direct the respondents to grant 3rd Modified Career Progression Scheme to the applicant by revising the scale of pay & pay all consequential monetary benefits including Revision Of Pension and arrears and to pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of this case. "

2. The brief facts of the case as submitted by the applicant are as follows:-

The applicant was initially appointed as Electrician on ad-hoc basis on time scale of pay on 14.08.1978. He was regularly absorbed as Electrician on 02.07.1979. He was appointed as Vocational Instructor on ad-hoc basis with effect from 31.12.1980 under direct recruitment quota. He was appointed as regular Vocational Instructor with effect from 01.04.1981. For all purpose including for calculating his pension, 02.07.1979 was taken as his date of entry into service. The Pension Payment Order also unambiguously states that his date of entry into Government service is on 02.07.1979. Accordingly the petitioner has completed more than 30 years of service and therefore, entitled for grant of 3rd Modified Assured Career Progression Scheme. The 1st respondent has also admitted that the applicant has completed 30 years of service. In spite of all this, the 2nd respondent is not granting 3rd MACP to the applicant. Hence, this Original Application is preferred seeking the aforesaid relief on the following grounds:-




"a. The applicant was appointed on 14.08.1978 in the time scale of pay and was continuously working on adhoc basis which resulted permanent absorption with effect from 02.07.1979. Thereafter, the right of counting the services from 02.07.1979 cannot be denied.

b. The 1st respondent in his letter dated 12-02.2015 categorically admitted that the Chennai office has certified the applicant's qualifying service as 30 years 8 months & 30 days without giving any monetary benefits. The Government of India requested to look into the matter for further action. But the 2nd respondent has not taken any action inspite of the directions given by the Government of India.

c. The date of entry into Government service was admitted as 02.07.1979 and the total length of qualifying service is 30 years, 8 months & 30 days. The 1st respondent in his letter dated 21.07.2014 also categorically admitted the fact that the applicant has completed the tenure of service of 30 years 8 months and 30 days. As per rules, he is entitled for 3rd Modified Career Progression Scheme. Inspite of the clear admission by the 1st respondent, the 2nd respondent intentionally not granting the 3rd Modified Assured Career Progression Scheme to the Applicant. "

3. Respondents have filed reply contesting the O.A. stating that the applicant wants his service in the grade of Electrician, both ad-hoc and regular, prior to his joining the grade of Vocational Instructor also should be counted for the purpose of reckoning the 30 years service that makes him eligible for the 3rd MACP. In this connection, as per para 9 in the Annexure to the DOPT OM No.35034/3/2008-Estt.(D) dated 19th May 2009, 'regular service' for the purpose of the MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis



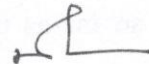
either on recruitment basis or on absorption/re-employment basis. Service on ad-hoc/contract basis before regular appointment on pre-appointment training shall not be taken into reckoning. However, past continuous regular service in another Government in a post carrying same grade pay prior to regular appointment in a new Department, without a break, shall also be counted towards regular service for the purposes of MACPS only (and not for the regular promotion). However, benefits under the MACPS in such cases shall not be considered till the satisfactory completion of the probation period in the new post. The applicant cannot seek to count the past service rendered in the grade of Electrician which is not equivalent to the grade of Vocational Instructor, to which he was appointed on direct recruitment basis. Even assuming that the prior service rendered has to be taken into account, it tantamounts to his having got one more promotion on his appointment to the grade of Vocational Instructor, which would make him ineligible for the third MACP on completion of 30 years. Hence the respondents pray for dismissal of the OA.

4. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.
5. The short point for consideration in this OA is whether the service rendered on adhoc and regular basis in the post of Electrician prior to his joining as Vocational Instructor on direct recruitment can be counted as eligibility service for the purpose of grant of 3rd MACP.
6. Admittedly, the entry of the applicant as Vocational Instructor was under Direct Recruitment, though initially his regular appointment was preceded by ad hoc



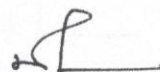
appointment in the same post. For taking up this appointment, the applicant had tendered his resignation from the post of Electrician. Resignation means, forfeiture of past services. The post of Vocational Instructor is not in the hierarchy of Electrician. Thus for all practical purpose, to reckon his service for ACP/MACP it was the date of regular appointment as Vocational Instructor that has to be the base. It was for this reason that on completion of 24 years of service calculated from 1981, the date of his regular appointment as Vocational Instructor, the applicant was afforded his second ACP (and his first ACP was from 09-08-1999, the date of introduction of ACP). His third MACP would be on the date he completes 30 years of service, which would be in 2011, whereas he had superannuated in 2010 itself. His claim to reckon his service as Electrician for 3rd MACP is not covered by any rule or instructions. The respondents are right in negating his claim for grant of 3rd MACP. Further, even assuming without accepting, his appointment as Electrician post is taken as entry level appointment, then again, his subsequent appointment as Vocational Instructor followed by two ACPs would account for 3 financial upgradations, in which event also, he is not entitled to any further financial upgradation.

7. Pursuant to the recommendation of the VI CPC, the DOPT issued an OM dated 19.05.2009 notifying the Modified Assured Career Progression Scheme (MACP Scheme). Annexure-1 to the OM contained the modalities of the said Scheme. Para 9 to Annexure-1 to the aforementioned OM dated 19.05.2009 merits reproduction thus:



'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 on pre-appointment training shall not be taken into reckoning. However, past continuous regular service in another Government Department in a post carrying same Grade Pay prior to regular appointment in a new Department, without a break, shall also be counted towards qualifying regular service for the purposes of MACPS only (and not for the regular promotions). However, benefits under the MACPS in such cases shall not be considered till the satisfactory completion of the probation period in the new post.

It is clear from the above, that the services rendered by the applicant on adhoc and regular basis in a lower post prior to joining of the post of Vocational Instructor cannot be taken into consideration for computing the period of service towards eligibility service for the purpose of grant of third upgradation under the MACP Scheme. As per Para 9 of the Annexure, regular service for the purpose of MACPS shall commence from the date of joining of the post in direct entry grade on a regular basis either on direct recruitment or on absorption basis. However, a past continuous regular service in a post carrying same Grade Pay prior to regular appointment shall also be counted towards regular service for the purpose of MACP. In the instant case, prior to appointment as Vocational Instructor, the applicant was working as Electrician on adhoc and regular basis in a lower scale of pay w.e.f. 14.08.1978 which is not equivalent to the grade of Vocational Instructor to which he was appointed on direct recruitment basis w.e.f. 31.12.1980 on adhoc basis and 01.04.1981 on regular basis. In so far as the MACP Scheme is concerned the eligibility service can be calculated only as per the said MACP Scheme. Therefore, the past service put in by the applicant in a lower grade cannot be considered as per Rules for the purpose of



grant of third MACP.

8. In view of what has been stated above, the relief sought for by the applicant cannot be granted.

9. In the result, the OA is liable to be dismissed and is accordingly dismissed. No costs. *l*

