

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Applicaton No.180/00282/2019**

Monday this the 8<sup>th</sup> day of July 2019

**C O R A M :**

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

Smt.Rajalekshmi Balachandran,  
D/o.P.Balachandran,  
Senior Superintendent,  
Regional Passport Office, Cochin.  
Residing at Arikkathil Lakshmi Nivas,  
Kureekad P.O., Ernakulam District – 682 304. ...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.
2. The Chief Passport Officer & Joint Secretary (CPV),  
Ministry of External Affairs, New Delhi.
3. The Regional Passport Officer,  
Regional Passport Office,  
Panampilly Nagar, Kochi – 682 035. ...Respondents

**(By Advocate Mr.N.Anilkumar, SCGSC)**

This application having been heard on 3<sup>rd</sup> July 2019, this Tribunal on 8<sup>th</sup> July 2019 delivered the following :

**O R D E R**

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

The O.A is filed by Smt.Rajalekshmi Balachandran aggrieved by the refusal on the part of the respondents to reckon the date of initial entry into service as 17.4.1990 ie., from the date of initial engagement as Daily

Rated Clerk, for granting financial upgradation under Assured Career Progression Scheme (ACP) on completion of 12 years of service. 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 A-3 and to declare that the applicant is entitled to be granted ACP benefits with effect from 18.4.2002 consequent to Annexure A-3 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 1<sup>st</sup> ACP upgradation of pay of the applicant as per ACP Scheme, with effect from 18.4.2002, with all consequential refixation and arrears of such refixation as has been granted to others 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.

And

4. To grant the costs of this Original Application.

2. The applicant is presently working as Senior Superintendent in the office of the 3<sup>rd</sup> respondent. She joined as a Daily Rated Clerk with effect from 17.4.1990 on being sponsored by the Employment Exchange and was regularized as LDC with effect from 6.10.1994 through Special Qualifying Examination conducted by the Staff Selection Commission on behalf of the Department. She stakes her claim for reckoning the date of initial entry into service for getting ACP benefits on the basis of Annexure A-1 order wherein the date of entry has been fixed as 17.4.1990, the financial upgradations as per ACP and MACP Schemes are also to be regulated reckoning that date only. It has also been specifically ordered therein to notionally refix the pay and all other benefits from 17.4.1990 except seniority in the grade of LDC which will be counted from 6.10.1994

only. It would be beneficial to extract Annexure A-1 here, which we do so as under :

In pursuance of CAT (Ernakulam Bench)'s judgment dated 14.7.2003 in O.A.No.1557/1998 & O.A.No.436/2005 dated 13.6.2005 and in partial modification of this Ministry's order of even number dated 18.1.1996 Smt.A.B.Rajalekshmy is appointed as a Lower Division Clerk in the Regional Passport Office, Cochin in the Central Passport Organisation of the Ministry of External Affairs in the pay scale of Rs.3050-75-3950-80-4590/- in a temporary capacity with effect from 17.4.1990, ie., from the date of her initial engagement as casual labourer.

Smt.A.B.Rajalekshmy will be entitled to all consequential benefits such as 'notional' fixation of pay, eligibility to appear in any test or examination if held for her promotion to the next higher grade, counting of qualifying service for terminal benefits from 17.4.1990 except seniority in the Grade of LDC which will be counted from 6.10.1994 only.

3. As grounds, the applicant submits that a large number of the officials who are initially engaged on daily wages have been already granted the benefits of reckoning their services for all purposes including ACP benefits and have been granted refixation of pay with effect from the date of initial entry on daily wages and she alone is being denied this, violating the principles of equality enshrined under Article 14 and 16 of the Constitution of India. She further submits that she is similarly placed as the applicants in O.A.No.523/2004, O.A.No.1027/2011 and O.A.No.180/454/2018. She has also mentioned in her representation, a copy of which is available at Annexure A-2, an order No.CDR-II/441/37/2011 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 1<sup>st</sup> financial upgradation under ACP Scheme with effect from the date of their initial entry with all consequential benefits.

4. The respondents in their reply statement submitted that the applicant was regularized as LDC with effect from 6.10.1994 and has been promoted to the next higher grade of UDC on 5.10.2006. Hence the applicant was given regular promotion to the next higher grade of UDC before completion of 12 years of regular service in the post of LDC and therefore she is not entitled to get the benefits of ACP Scheme. It is stated that any prior service rendered as a casual employee cannot be counted as regular service and the casual service also cannot be counted for the purpose of ACP Scheme. For the purpose of granting ACP the applicant's 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, as per paragraph 9 of Annexure-I of DoP&T's O.M No.35034/3/2008-Estt.(D) dated 19.5.2009, '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.

5. We have heard Shri.Shafik.M.A., learned counsel appearing on behalf of the applicant and Shri.N.Anilkumar, learned SCGSC appearing on behalf of the respondents. We have also perused the documents available on record.

6. The applicant in this O.A contends that from the date of her initial appointment as Daily Rated Clerk ie. 17.4.1990, the service of 12 years should have been counted for grant of 1<sup>st</sup> financial upgradation under ACP. This contention of the applicant find supports in various orders of this Tribunal which had been decided in favour of similarly placed persons and those decisions 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 in holding that the decisions referred to above govern the field. Accordingly the O.A is allowed. Keeping in view the earlier orders referred to above on the subject, we direct the respondents to grant the benefits of 1<sup>st</sup> financial upgradation under the ACP Scheme with effect from 17.4.2002 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 this the 8<sup>th</sup> day of July 2019)

**ASHISH KALIA**  
**JUDICIAL MEMBER**

**E.K.BHARAT BHUSHAN**  
**ADMINISTRATIVE MEMBER**

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**List of Annexures in O.A.No.180/00282/2019**

- 1. Annexure A-1** – A copy of the order No.V.IV/578/89/95 dated 21.9.2005 of the Deputy Secretary (PV) of the 2<sup>nd</sup> respondent.
- 2. Annexure A-2** – A copy of the representation dated 22.2.2018 submitted before the 2<sup>nd</sup> respondent.
- 3. Annexure A-3** – A copy of the order dated 13.2.2019 of this Hon'ble Tribunal in O.A.No.180/454/2018.

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