

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI

Lib

OA No.235/2012
with
MA No.230/2012

Dated this Friday the 7th day of June, 2019

Coram: R. Vijaykumar, Member (A).
Ravinder Kaur, Member (J).

Sunil Kumar Das
Aged about 42 years,
Residing at Quarter No.4/6,
Defence Colony,
Lulanagar, Post-Wanowrie,
Pune-411 040.
Employed in Southern Command
Signal Regiment,
Pune-411 001.

...Applicant.

(By Advocate Shri P. J. Prasadrao).

Versus

1. Union of India,
Through the Secretary,
Ministry of Defence,
South Block,
New Delhi-110011.
2. Director General of Signals
(Sigs 4(C))
General Staff Branch,
Integrated Headquarters of
Ministry of Defence (Army)
DHQ PO New Delhi 110011.
3. Officer-In-Charge,
Records Signals,
Jabalpur Pin 901124,
C/o 56 APO.
4. The Commanding Officer
Southern Command Signal

Regiment, Pune-411 001.

5. The Principal Controller
of Defence Accounts,
(Southern Command),
No.1, Finance Road,
Pune-411 001.

... Respondents.

(By Advocate Shri D. A. Dube and Shri N. K.
Rajpurohit).

O R D E R (O R A L)

Per : R. Vijaykumar, Member (Administrative)

1. Today when the case is called out, heard Sh. P. J. Prasadrao, learned counsel for the applicant and Sh. D. A. Dube along with Sh. N. K. Rajpurohit, learned counsels for the respondents.

2. This application has been filed on 21.02.2012 under Section 19 of the Administrative Tribunal's Act, 1985 seeking the following reliefs:

"(a) To allow this Application.

(b) This Hon'ble Tribunal be pleased to quash and set aside the impugned order dated 17.11.2009.

(c) This Hon'ble Tribunal may be pleased to direct the Respondents to grant time bound promotion to the applicant with retrospective effect with effect from 1st Oct, 2004, with the consequential benefits.

(d) The Hon'ble Tribunal may be pleased to direct the Respondents to grant arrears of pay with 12% of interest on account of time bound

promotion.

(e) Any other or further order(s) may be granted in the interest of justice.

(f) Cost of the application may be awarded in favour of the Applicants."

3. The respondents have issued orders impugned in [Exhibit A1 (I-II)] granting second time bound promotion to the applicant, among others, from 13.12.2009. The applicant, thereafter filed a representation on 17.08.2010 which was received by the respondents on 18.08.2010 stating that he had been appointed on 01.10.1988 on temporary basis and then had been regularized w.e.f. 13.12.1993. However, the TBOP had been granted only with effect from the date of regularization rather than the date of appointment on temporary basis which was five years previously on 01.10.1988 and that similar benefits had been granted to eight similarly placed individuals who were seniors to the applicant, in Order no. B/44572/TBT/Signs 4(c)/334/D(QS) dated 12.08.2008 in compliance with the orders of this Tribunal in its Guwahati and Calcutta Benches passed in March, 2008. In these orders, the period of temporary service was considered and it was found

that those applicants were appointed as C.S.B.O. Grade-II against Headquarters vacancy on temporary capacity after selection by the respondents authorities and after medical examination, they were issued formal appointment orders.

4. After formal appointment, the present applicant's appointment was continued with some breaks. The applicant has also enclosed an internal communication from I.D.Q. Delhi in Annexure A-I-II stating that the DoPT had advised them the orders of the Guwahati and Calcutta Bench applied only to the specific cases and for extending benefits to similarly placed employees, the matter had been taken up with the Ministry in letter dated 17.11.2009 for obtaining approval of DoPT and its outcome was awaited.

5. The respondents have not given any reply to the representation of the applicant and the applicant had then approached the Tribunal.

6. An MA No.230/2012 has been filed by the applicant for condonation of delay. In the present case, a representation against the TBOP order was filed by the respondents on 18.08.2010 and after considering that the period of 18 months expired on

18.02.2012, there is a delay of 03 days for filing this OA.

7. The respondents have objected to delay and laches in their reply. However, considering the short delay, the absence of any formal reply to the applicant by the respondents and the facts and circumstances of the matter, this delay is condoned.

8. The respondents have urged that the decision in the orders of the Tribunal in the Calcutta and Guwahati Benches which were the basis for issue of their orders in Annexure A-8 dated 12.08.2018 cited supra applied only in specific cases. They have not pointed out in any manner how the present case differs in terms of the facts and circumstances of the temporary appointments, and the existence of vacancies against which they were appointed.

9. The learned counsels were heard at length and pleadings have been examined carefully. At the outset, it is noticed that the applicant's grievance is in relation to the grant of TBOP from the date of regularization and not from the date of entry into casual service in temporary capacity against the vacancies existing at Headquarters. In pleadings the

applicant confuses the TGOP and the ACP and argues these different schemes in different pleadings. However, the ACP exploitory provides for counting only regular service and there is no ambiguity of any kind in orders issued for grant of ACP. However, the present claim relates to the grant of TBOP. In this connection, the Hon'ble Apex Court has observed in Union of India Vs. M. Mathivanan (2006) 6 SCC 57 that TBPS only required completion of 16 years of service in the basic grade for placement in the next higher grade and there was no mention of the term regular service. In that case the petitioner joined on daily wage basis as Postal Assistant on 28.12.1981 and volunteered for enrollment in the Army Postal Service as Postal Assistant Cuddalore Postal Division w.e.f. 27.08.1983 which bore the condition that the appointment was without allowing any claim for regular absorption in preference to his seniors in the Reserve Training Pool (RTP) list of the division and therefore, without disturbing inter-se seniority. He was later selected as Warrant Officer when he was working in the RTP as Postal Assistant and when he was appointed as Warrant Officer, he was designated and appointed as Postal

Assistant w.e.f. 30.09.1983 Thereafter, he was appointed as Postal Assistant on regular basis in his turn from 18.07.1989. The department considered him as having complete 16 years of regular service in 2007 as against him claim for getting the benefit from September, 30 1999 based on completion of 16 years of service from 30.09.1983. The Hon'ble Apex Court noted that para 1 of the TBP Scheme spoke of 16 years of service in that grade (lower grade) whereas, the other paragraphs spoke of regular service. The applicant and respondents before the Hon'ble Apex Court received the benefit in consequence of this ambiguity and the beneficial effect of the provision in para 1 of TBP Scheme. It is also settled law that in the case of the ambiguity, an interpretation can be made or else it could be preceded by executive instructions which were not available evidently at that point in time.

10. In these circumstances and the rulings of the Hon'ble Apex court in the above case and considering that similarly placed persons, although senior to the applicant, have already been granted the benefits by the co-ordinate benches of this Tribunal at Guwahati and Kolkata, there are abundant

reasons for the applicant to also receive the same treatment and consequent benefits.

11. In the facts and circumstances, the OA is allowed. The orders passed by the respondents in Annexure A-I-II dated 29.01.2010 shall be altered to reflect the present judgment and arrears that will become due shall be paid to the applicant within eight weeks. There shall be no order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

v.

*JP
18/6*