

(2019) 05 CAT CK 0057

In the Central Administrative Tribunal

Case No : Original Application No. 2982 Of 2017

Madan Lal, Retd. Technical Assistant,

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 08-05-2019

Acts Referred:

Citation : (2019) 05 CAT CK 0057

Hon'ble Judges : Pradeep Kumar, J; Ashish Kalia, J

Bench : Division Bench

Advocate : M.K. Bhardwaj, Rishi Kant Singh

Final Decision : Disposed Off

Judgement

Ashish Kalia, J

1. The present OA is filed by the applicant seeking following reliefs:-

"(i) to quash and set aside the impugned order dated 20.01.2017 and direct the respondents to grant 1st Financial Upgradation to the applicant in the pay scale of Rs. 9300-34800 with grade pay of Rs. 4200 from 10.08.2006 by treating the service rendered from the initial date of appointment as Technical Assistant as per order dated 11.08.1994 as eligible service for grant of Financial Upgradation under ACP Scheme dated 09.08.1999.

(ii) To declare the action of the respondents in not treating the service rendered by the applicant as Technical Assistant on Adhoc/continuous regular basis as eligible service for grant of Financial Upgradation under ACP Scheme as illegal, arbitrary and unjustified and direct the respondents to treat the Adhoc/continuous regular service as eligible service under ACP Scheme dated 09.08.1999 and grant 1st Financial Upgradation to the applicant in the pay scale of Rs. 9300-34800 with grade pay of Rs. 4200 w.e.f. 10.08.2006/ completion of 12 years of service from the date of appointment as TA as per order dated 11.08.1994 with all consequential benefits including arrears of pay as well as

revised including arrears of pay as well as revised pension and other retirement benefits.

(iii) To allow the O.A. with costs.

(iv) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant."

2. The brief facts of the case are:-

(i) The applicant was appointed as Laboratory Assistant on 23.11.1979.

(ii) In 1994, he was appointed as Technical Assistant in the Pay Scale Rs. 4500-7000 and against clear vacancy, his appointment was treated as adhoc. His services got regularised for the same post in the year 1998.

(iii) After completion of requisite years of service, the applicant became eligible for promotion to the post of Office Superintendent, however, he was not granted promotion and continued on the same post of Technical Assistant for more than 12 years.

(iv) As the applicant had completed 12 years of regular service without any promotion, therefore, he was required to be considered for grant of Financial Upgradation under ACP Scheme dated 09.08.1999. The respondents did not do the needful. Finally the applicant retired from service w.e.f. 31.05.2008 on attaining age of superannuation.

(v) Despite having submitted repeated representations, the Competent Authority rejected his representation dated 01.12.2016, vide impugned order dated 20.01.2017 on the ground that the Adhoc service of applicant as Technical Assistant could not be treated as eligible service for grant of Financial Upgradation under ACP Scheme dated 09.08.1999.

3. Feeling aggrieved, the applicant approached this Tribunal for redressal of his grievance.

4. Notices were issued to the respondents and they have filed the reply and took objection to the OA submitted therein. In the reply, they have pointed out that the applicant has approached this Tribunal after so many years as he has been superannuated in the year of 2008. It is further submitted that the applicant was granted age relaxation about 11 years 8 months 3 days, for grant of the promotion to the post of Technical Assistant, which he has not disclosed to Tribunal. Thus, he has suppressed this information.

However, it is submitted that the present OA is not having any merit and it shall be dismissed.

5. Heard the counsels and perused the records and legal submissions.

6. The grievance of the applicant is that he was appointed initially on ad-hoc basis on 11.08.1994 as Technical Assistant and he assumed the charge of the

post. Later on, by order dated 09.07.1998, he has been given same very post. After getting selected through selection process, he was appointed by the Department itself through open competition by advertisement.

7. The applicant has made a representation that his ad-hoc services should have been counted by the respondents for grant of benefit under ACP/MACP Scheme, which has not been granted by the respondent.

Sh. Rishi Kant Singh, learned counsel for Respondent No. 3 is making distinction that applicant was initially appointed to the post of Lab Technician on ad-hoc basis in the year of 1994. He has been again recruited freshly by Departmental selection process on 09.07.1998 and he would be entitled to first ACP on completion of 12 years from this date.

8. Learned counsel for applicant has drawn our attention to the Order passed by this Tribunal in OA 3184/2010 in the matter of Satish Kumar vs. The Secretary of Ministry of Health. Its operative para reads as under:-

"3. In support of his aforesaid reliefs, the learned counsel for the applicant has relied upon the judgment of the High Court of Judicature at Madras dated 10.09.2008 in Writ Petition No. 5876 of 2008 The Union of India and Anr. Vs. Vs. Skariah Thomas arising out of the order of the Madras Bench of this Tribunal dated 05.04.2007 in O.A. 85/2006. The facts in the said case were that the applicant therein was appointed as LDC on ad hoc basis on 28.05.1987 and without any formal order of confirmation/regularization, he has been continuing from the inception of his appointment without any break. He claimed that he should be given the benefit of first ACP by taking into account his service from the inception whereas the stand of the Department before the Tribunal was that the period of service rendered by him was on ad hoc basis and it could not be counted for the purpose of giving the benefits of ACP Scheme but the Tribunal by placing reliance upon the judgment of the Apex Court in Union of India & Ors. Vs. M. Mathiyanan (2006 (6) SCC 57) directed the respondent Department to consider the question of taking into account his entire period of service including the period rendered on ad hoc basis for the purpose of granting ACP benefits. The respondent Department (Union of India) challenged the aforesaid order of the Tribunal before the Honble High Court of Delhi vide Writ Petition No. 5876 of 2008 relying upon Paragraphs 3.1 and 3.2 of the Office Memorandum dated 08.09.1999 which reads as under:

3.1 While in respect of these categories also promotion shall continue to be duly earned, it is proposed to adopt the ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Keeping in view all relevant factors, it has, therefore, been decided to grant two financial upgradations (as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 (in relation to Group `C and `D employees) entered into with the Staff Side of the National Council (JCM) under the ACP Scheme to Group `B, `C and `D employees

on completion of 12 years and 24 years (subject to condition no.

4 in Annexure-I) of regular service respectively. Isolated posts in Group `A, `B, `C and `D categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees (including those with temporary status), ad hoc and contract employees shall not qualify for benefits under the aforesaid Scheme. Grant of financial upgradations under the ACP Scheme shall, however, be subject to the conditions mentioned in Annexure-I.

3.2 `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."

The crux of this judgement, i.e., Union of India & Ors. vs. M. Mathivanan (2006 (6) SCC 57), is that the entire service including ad hoc service should be counted for the purpose for granting of ACP Scheme benefits as this Scheme is to mitigate hardship in case of acute hardship, thus two financial upgradation be granted.

The applicant's case is also similar to above said situation and he has not been granted financial upgradation for more than 12 years by not taking into account the Ad hoc officiation as Technical Assistant post.

9. Taking shelter of this judgement, we are of this view that the applicant's ad hoc services liable to be counted for the purpose of ACP, as and when due, after taking into account his appointment to the post of Ad hoc basis w.e.f. 11.08.1994.

10. This OA is disposed of with the direction to the respondents to grant the applicant, his financial benefits under ACP Scheme after counting his ad hoc service w.e.f. 11.08.1994 in the Pay Scale of Rs. 9300-34800 with Grade Pay of Rs. 4200/- with all consequential benefits.

11. The pension of the applicant be refixed notionally from the date it was due. However, actual financial benefit be granted for three years prior to the date he has approached this Tribunal in terms of direction of Supreme Court as applicant has approached more than a decade.

12. The above order shall be implemented within a period of 90 days. Parties shall bear their own cost.