

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22139 of 2015 (O&M)

Date of Decision: 23.05.2016

Union of India & Ors.

... Petitioners

VS.

CAT Chandigarh & Ors.

... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE A.B. CHAUDHARI**

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Present: Mr. Praveen Chander Goyal, Advocate for the petitioners

Mr. Barjesh Mittal, Advocate for respondents No.2 to 19

SURYA KANT, J. (Oral)

(1) Union of India has laid challenge to the order dated 15.05.2014 of Central Administrative Tribunal, Chandigarh Bench (in short, 'the Tribunal') whereby the Original Application filed by the private respondents for taking into consideration the entire service rendered by them from the date they were initially engaged, for the purpose of ACP/MACP benefits has been allowed. It may be mentioned here that the private respondents were initially engaged on casual/temporary basis on different dates starting from the year 1980 to 1986. Most of them were appointed on regular basis w.e.f. 01.03.1989 except 3-4 of them who got such regular appointment w.e.f. 14.07.1983, 10.03.1988 and 04.10.1990.

(2) It is an admitted fact that the Tribunal has accepted the claim of the respondents relying upon catena of decisions rendered by different Benches of the Tribunal in identical circumstances, especially the order passed by the Mumbai Bench of Tribunal dated 12.09.2011 rendered in OA

No.193/2011 to 263/2011 etc. [(Karan Anant Purao and Others vs. Union of India) (A3)]. The Tribunal thus observed as follows:-

“We have given our thoughtful consideration to the matter. The issue is no longer res-integra as the Coordinate Bench of CAT Mumbai had disposed of 74 OAs allowing the claim of persons similarly situated to the applicants to count the service rendered by them from the initial date of their engagement for ACP benefits and the Bombay High Court had dismissed the judicial review filed in this regard by the respondents through General Manager, CSD Mumbai who is respondent No.2 in the present OA also. The Courts have held time and again that similarly situated employees have to be allowed the benefit of judicial pronouncements and individual claimants should not have to approach the Tribunal/Courts seeking the same relief over and over again. It is also observed that a similar matter had been decided through order dated 2.8.2013 in OA No.1439/PB/2012 (Annexure A-1), but it appears that the respondents are bent upon opposing the claims of similarly situated employees seeking identical relief. This attitude of the respondent department is to be deprecated in no uncertain terms.”

(3) It is an admitted fact that the decision of the Mumbai Bench of the Tribunal was duly upheld by the Bombay High Court vide order dated 24.07.2013 which holds that:-

“In the light of the aforesaid judgments of the Supreme Court, we are of the opinion that the view taken by the CAT, Mumbai Bench does not call for any interference, particularly since limited relief of counting the service from initial date of engagement for the purpose of financial upgradation under ACPS has been granted to the respondent employees by taking into consideration the peculiar facts and circumstances of the case.”

(4) Union of India preferred SLP against the decision of Bombay High Court which has also been declined on 16.07.2015 though on the ground of delay. Resultantly, the order passed by Mumbai Bench of the Tribunal and the Bombay High Court have attained finality.

(5) We have heard learned counsel for the parties at a considerable length and gone through the record.

(6) It appears to us that since the claim of similarly placed employees, which was accepted by the Tribunal's co-ordinate Bench at Mumbai, has attained finality and they have got the financial upgradation under ACP/MACP by taking into account their service from the date(s) of initial engagement, any different view by this Court would unwittingly lead to discrimination amongst the similarly placed employees.

(7) Besides that, the Tribunal has rightly on consideration of the facts held that the initial engagement of respondent was on being sponsored by Employment Exchange and their services were subsequently regularized by the respondents. Since it was not a case of back-door entry as they were appointed through competitive process, such appointment cannot be termed irregular.

(8) The Bombay High Court relied upon the decision of the Hon'ble Supreme Court in *State of Maharashtra & Ors. vs. Uttam Vishnu Pawar (2008) 2 SCC 646*, taking note of its previous decisions in the case of *Dwijen Chandra Sarkar & Anr. vs. Union of India & Ors., (1999) 2 SCC 119*, *Union of India vs. V.N. Bhat (2003) 8 SCC 714*, *APSEB vs. R.Parthasarathi (1998) 9 SCC 425*, *Scientific Advisor to Raksha Mantri vs. VM Joseph (1998) 5 SCC 305* and *Renu Mullick vs. Union of India (1994) 1 SCC 373* to hold that the very purpose of ACP/MACP is to relieve frustration on account of stagnation and the scheme does not involve the actual grant of promotional post to the employees but merely monetary benefits in the form of next higher grade subject to fulfillment of qualifications and eligibility criteria. Thus, the benefit of service rendered by the respondents before their regular absorption, if counted, neither it affects the seniority of directly recruited other members of the cadre nor it affects them in terms of the promotional aspirations. The respondents rather would continue to retain the same status except monetary benefits admissible in the higher grade.

(9) For the reasons afore-stated, we do not find any ground to interfere with the order passed by the Tribunal.

(10) Dismissed.

(Surya Kant)
Judge

23.05.2016
vishal shonkar

(A.B. Chaudhari)
Judge