

Item-
ML-10. 01-04-2024

FMA 87 of 2023
CAN 2 of 2022

sg Ct. 8

Union of India & Ors.
Versus
Jitendra Prasad Mali

Mr. Pramod Kumar Drolia, Adv.
Mr. Santosh Kumar Pandey, Adv.
...for the appellants
Ms. Pampa Dey Dhabal, Adv.
Ms. Sanjita Banerjee, Adv.
...for the respondent

1. The appeal is arising out of an order dated 24th February, 2022 in a writ petition in which the writ petitioner has prayed for sanction of benefits under Assured Career Progression Scheme (ACPS)/Modified Assured Career Progression Scheme (MACPS) which was denied to the petitioner on the ground of lack of qualified service for extension of such benefit to the petitioner.
2. Indisputedly, the petitioner was appointed on substantive basis against a sanctioned vacancy on 15th July, 1985 as Water Carrier and subsequently on 8th April, 1992, he was promoted to the post of Constable. In terms of Clause 9 under Annexure-1 of the MACP Scheme issued vide Memorandum dated 19th May, 2009, he would be entitled to the benefit of past continuous regular service 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. In fact, the said Clause 9 has been reproduced by the respondent authorities in its letter dated 28th January, 2016 by which the claim of the petitioner was

spurned. For convenience, the said Clause is reproduced below:

“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.”

3. In consideration of the aforesaid clause read with the nature of appointment of the petitioner on 15th July, 1995 in the post of Water Carrier while sanctioning the benefit in terms of ACP Scheme/MACP Scheme, the period of service rendered by the petitioner ought to be counted with effect from 15th July, 1985 instead of 8th April, 1992. The very fact that he was promoted from the post of Water Carrier to Constable (Group-C Post) on 8th April, 1992 does not obliterate the service rendered by the petitioner on substantive basis with effect from 15th July, 1985 in the post of Water Carrier.
4. The reference to the clarification referred by Mr. Pramod Kumar Drolia, learned Counsel representing the Union of

India does not come to the aid of the appellant and would not be applicable so far as the writ petitioner is concerned.

5. Mr. Drolia has submitted that in terms of the Memorandum dated 30th September, 2004 and the office Memorandum dated 10th February, 1010, the service of the petitioner for the purpose of extending the said benefit should be 12 years from the date of initial appointment and since he was appointed to the post of Constable in Group-C post on 8th April, 1992 the period of service earlier thereto cannot be considered.
6. We have read the said Memorandum carefully. The said Memorandum in Clause 4 on which reliance is placed is not applicable to the appellant. The writ petitioner in paragraph 4 of the writ petition has stated that after completion of seven years of service on 8th April, 1992, the petitioner was promoted through promotional avenue in Group-C Post by qualifying departmental examination and he was promoted to the post of Constable in CISF Unit BSL Bokaro. In the affidavit-in-opposition in dealing with the said paragraph the appellant contended that the writ petitioner was initially appointed as Water Carrier (Follower) in CISF on 15th July, 1995 under the category of Group-D posts in the pay scale and after rendering six years eight months and twenty three days of service in the Group-D category, he was re-mustered to the rank of Constable (GD) in CISF under the category of Group-C posts with effect from 8th April, 1992 as a fresh appointment on regular basis in the pay scale. It thus appears that there has been an up-gradation of the writ petitioner

from the Group-D post to Group-C post through promotional avenue which has not been denied in the affidavit-in-reply.

7. In view thereof, we are in agreement with the views expressed by the learned Single Judge and the order under appeal is affirmed.

8. The appeal and the application are, accordingly, dismissed.
However, there shall be no order as to costs.

9. Mr. Drolia has prayed for stay of operation of the order.
The said prayer is considered and rejected.

10. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Uday Kumar, J.)