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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 10.04.2024

+ W.P.(C) 4292/2023 AND CM APPL. 16569/2023 –Stay and CM
APPL. 37651/2023 –Vac. Of stay.

UNION OF INDIA

..... Petitioner

Through: Mr. Nitinjya Chaudhry, SPC with Ms.
Vidhi Guypa, G.P., Mr. Rahul Mourya, Adv.

versus

ASH MOHAMMAD AND ANR

..... Respondent

Through: Mr. Shivanshu Bhardwaj, Mr. Mridul
Gaur, Mr. Rajiv Singh, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

REKHA PALLI, J (ORAL)



1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 18.08.2022 passed by the learned Central Administrative Tribunal in O.A. No. 4002/2014. Vide the impugned order, the learned Tribunal has allowed the original application filed by the respondents and has consequently set aside the communication dated 08.08.2014 issued by the petitioner by directing them to re-determine the date of grant of financial upgradation under ACP/MACP to the respondents, by including the service rendered by them before they attained the age of 18 years
2. At the outset, the brief factual matrix of the matter as emerging from the record may be noted. The respondent nos. 1 & 2 joined the petitioner as messenger boys on 22.10.1982 and 29.06.1983 respectively, on which date they were both aged about 15 years. This appointment was done in accordance with the then prevailing recruitment rules which permitted the petitioner to appoint a person below 18 years as a 'Messenger Boy'. During the course of their employment, both the respondents were promoted to the post of Orderly w.e.f. 01.11.1985 and 01.01.1986 respectively. It is the common case of the parties that the respondents are still in service as they are yet to reach the age of superannuation.
3. On 09.08.1999, the Department of Personnel & Training (DoPT), in order to remove stagnation, introduced an Assured Career Progression Scheme (hereinafter referred to as ACP Scheme). As per this OM, the Central Government employees in Group B, C & D were to be considered for two upgradations of their pay scale, the first after 12 years of regular service and the second after 24 years of service. This was subject to the



employees not earning any promotion during this period. This ACP Scheme was subsequently substituted by a modified ACP Scheme known as the MACP, whereunder employees were entitled to three upgradations each after 10 years of service, subject to not earning any promotion during the said period.

4. Even though the ACP Scheme was introduced on 09.08.1999, on account of various O.As pending before different Benches of the Tribunal, regarding the scale in which the benefits under the ACP Scheme were payable, these benefits were extended to the respondents only on 11.07.2013. As these benefits were granted to the respondents by excluding their entire service as Messenger Boy, when they were below 18 years of age, they submitted representations to the petitioners dated 15.07.2014 and 01.08.2014 with a prayer that their service be taken into account from the date they joined as Messenger Boy and not from the date when they turned 18. Upon their representations being rejected on 08.08.2014, the respondents approached the learned Tribunal by way of OA No. 1623/2014, which has been allowed under the impugned order with a direction to the petitioner to grant them benefits under the ACP/MACP Scheme by including the service rendered by them before they had attained the age of 18 years.

5. In support of the petition, learned counsel for the petitioner submits that the impugned order is perverse as the learned Tribunal has failed to appreciate that the engagement of the respondents as Messenger Boy was not a regular employment and, therefore, the petitioner was justified in taking into account their service only w.e.f. 01.11.1985 and 01.01.1986 respectively, when they were designated as Orderlies. The respondents plea that they were promoted as Orderlies, he contends, is misplaced merely



because the orders designating them as Orderlies incorrectly refer to the same as promotion, would not imply that they were promoted on 01.11.1985 and 01.01.1986 as claimed by them. Furthermore, there was a delay on the part of the respondents in approaching the Tribunal, and, therefore, on this ground also, the O.A. was liable to be rejected. He, therefore, prays that the impugned order be set aside.

6. On the other hand, Mr. Shivanshu Bhardwaj, learned counsel for the respondents supports the impugned order and contends that the service of the respondents as Messenger Boy would fall within the ambit of the term 'regular service' as defined in para 3.2 of the DoPT's OM dated 09.08.1999, whereunder the ACP Scheme was introduced. He submits that as per this O.M any service, which is taken into consideration for promotion would be treated as 'regular service'. The petitioners having taken into account the service of the respondents as Messenger Boy for the purposes of considering them for promotion, cannot now be permitted to urge that they were re-designated as Orderlies and not promoted as Orderlies. By drawing our attention to the petitioner's letter dated 01.11.1985 addressed to the respondent no.1, he submits that the aforesaid letter states in categorical terms that the respondent no.1 was being promoted to the post of Orderly. His plea, thus, is that the petitioner cannot, at this belated stage, be permitted to urge that the word 'promotion' used in the said letter was due to any error on their part. He, therefore, prays that the writ petition be dismissed.

7. From the rival submissions of the parties, what emerges is that the only issue on which the parties are at variance is as to whether the service rendered by the respondents as Messenger Boy would qualify as 'regular service' as envisaged under para 3.2 of the DoPT's OM dated 09.08.1999. It



would, therefore, be apposite to begin by noting this para of the O.M, which reads as under:-

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.

8. From a bare perusal of the aforesaid, what emerges is that any service, which, as per the Recruitment Rules, is treated as eligibility service for regular promotion has to be treated as 'regular service' for the purposes of consideration for benefits under the ACP Scheme as well. Since, it is undisputed that it is only after rendering service for about three years that the respondents were issued orders appointing them as Orderlies, it is evident that this service rendered by the respondent no.1 between 22.10.1982 and 01.11.1985, and by respondent no.2 between 29.06.1983 and 24.10.1986, were taken into account while appointing them as Orderlies. The only question, therefore, would be whether this appointment of the respondents as Orderlies was a promotion or merely a re-designation. In order to determine this question, it would be necessary to refer to the relevant extracts of the letter dated 01.11.1985, vide which respondent no.1 was promoted as Orderly. The same reads as under:-

"No. 2234

Dated 01.11.1985

*SUBJECT PROMOTION OF GROUP 'D' IN
INDUSTRIAL ESTABLISHMENT*



1- The following promotions are considered in compliance of order for the non industrial establishment of this factory to Group D wef 01.11.1985 or the date of assuming responsibility on the higher post, whichever is later, is promoted

<i>S.No.</i>	<i>Name and No.</i>	<i>From the post of</i>	<i>To the post of</i>	<i>Remarks</i>
<i>1.</i>	<i>Shri Ash Mohamad</i>	<i>Messenger WO</i>	<i>Ardali WO Establishment</i>	<i>Existing Vacancy</i>
<i>2.</i>	<i>Shri Sunil Kumar</i>	<i>Messenger/Establishment</i>	<i>Ardali Establishment</i>	<i>Existing Vacancy</i>

2- This is to certified that the above promotion has been considered on the basis of seniority and has not remained vacant for more than one year.

3- The above persons will have to submit their option within 1 month from the date of their promotion / or published in compliance of Order Part I No. 384 dated 21/08/82 which notified by the Ministry of Home Affairs, Personnel Department vide notification no. 7/1/80-Estb(part-1) dated 26.09.1981 mentioned in Article 2(a) or 2(2) want to set their salary according to

Sd/-



*DSP Shrivastava
General Manager”*

9. In the light of the term ‘promotion’ being repeatedly used in the aforesaid letter, we see no reason to accept the petitioner’s bald plea that the respondents appointment as Orderlies was not by way of a promotion but was merely a re-designation. The respondents appointment as Orderlies was evidently by way of a promotion for which promotion the petitioner took into account their service as Messenger Boy even though the same was rendered when they were less than 18 years of age. The petitioner is, therefore, estopped from now urging that this service will not be taken into account for the purposes of grant of ACP. The learned Tribunal was, therefore, in our view correct in holding that this period of the respondents’ service as Messenger Boy should be taken into account for the purposes of ACP as well.

10. At this stage, we may also refer to the relevant extracts of the impugned order, which read as under:-

“9. The facts of the case are not disputed. The applicants were appointed as Messenger Boys in the year 1982 and 1983 respectively. At the time of their appointment, they had not attained the age of 18 years, as at that relevant point of time, appointment to this post could be made if a person had attained the minimum age of 14 years.

10. The limited issue before us is whether the service rendered between 14 years and 18 years of age, or any period prior to attaining the age of 18 years shall be counted for the purpose of determining the qualifying service for ACP /MACP.



11. There is no categorical stipulation in the rules and instructions of the DoP&T on this subject.

12. We have no doubt in our mind that grant of ACP and MACP is to be governed strictly in accordance with the instructions of the DoP&T and each and every department of the Government cannot be allowed to have its own internal rules in the matter. Even in the instant case, what we have from the respondents is a clarification which states that the service rendered prior to attaining the age of 18 years will not be counted as a qualifying service. Whether this clarification draws strength from statutory rules or not, is not clear. Even if it does, we are not convinced that it would override the instructions of the DoP&T. Moreover, we do not find any justification in denying the benefits of service which the employee has rendered, even if the service may have been rendered as a minor. Infact, greater sympathy and compassion should have been shown in the case of a minor .

13. Accordingly, we allow the present Original Application and set aside the impugned communication dated 08.08.2014 (Annexure A-1 and A-2) and direct the respondents to re-determine the date of grant of ACP /MACP to the applicants by providing them the benefits of the qualifying service they have rendered prior to attaining the age of 18 years. The said directions shall be complied with by the competent authority within a period of 12 weeks' from the date of this order. The applicant shall also be entitled to all consequential benefits that may arise due to implementation of these directions”

11. From a perusal of the aforesaid extracts of the impugned order, we find that the learned Tribunal has also taken into consideration that there is



no provision in the DoPT's OM dated 09.08.1999 which mandates that regular service rendered before the age of 18 years should be excluded for the purposes of computing service for grant of benefits under the ACP Scheme. We are, therefore, inclined to agree with the learned Tribunal that there being no provision in the OM for exclusion of service below 18 years, the respondents' service as Messenger Boy could not be excluded. In fact, we find that, on the other hand the O.M. provides that the entire service, which is taken into account for the purposes of regular promotion must be taken into consideration for ACP as well. In these circumstances, the petitioner having taken into account this service of the respondents rendered before they attained the age of 18 years for the purpose of their promotion to the post of orderlies, could not exclude this service for grant of benefits of ACP/MACP.

12. We have also considered the petitioner's plea that the O.A. was barred by delay and laches, but find no merit in the same. From the factual matrix noted hereinabove, it is clear that the decision to grant benefits of ACP to the respondents and other similarly placed persons was finalised only in 2013 and, therefore, by no stretch of imagination, could the O.A. filed in 2014 could be said to be hit by limitation. Furthermore, we find that this plea of delay was in fact not even raised before the learned Tribunal.

13. For the aforesaid reasons, we find no infirmity with the impugned order which in essence direct that the respondents must be granted the benefit of their entire service including the service rendered by them before attaining the age of 18 years.



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14. We, therefore, find no merit in the petition, which is, accordingly, dismissed.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

APRIL 10, 2024
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