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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision:- 01.03.2024.***

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W.P.(C) 13476/2023 & CM APPL. 53256/2023 -Stay.**UNION OF INDIA & ANR.****..... Petitioner****Through: Mr.Vineet Dhanda, CGSC with
Ms.Guleen Kaur, Mr.Archit Aggawal, Advs.****Versus****ANIL SARAN BHATNAGAR & ORS.****..... Respondent****Through: Ms.Sriparna Chatterjee with
Mr.Soumitra Chatterjee, Mr.Manish, 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 & 227 of the Constitution of India seeks to assail the order dated 02.02.2023 passed by the learned Central Administrative Tribunal in O.A.1667/2019.
2. Vide the impugned order, the learned Tribunal has set aside the orders dated 03.01.2019, 27.11.2018, 25.01.2019, 04.01.2019, and 28.02.2019, passed by the petitioners by directing them to include the two years period during which the respondents were undergoing training towards qualifying service for deciding their eligibility for grant of financial upgradation under the ACP/MACP Scheme.
3. Before we deal with the rival submissions of the parties, it may be



apposite to note the brief factual matrix of the case.

4. Upon being selected for the post of Surveyor, the respondents joined the petitioner organisation on different dates between 1982-1987 and were directed to undergo 2 years training, during which period they were known as Topographical Trainee Type-A (TTT) 'A'. Upon successful completion of the training period the respondents were posted as Surveyors. In 2004, some surveyors and Topographical Trainee Type-B (TTT 'B') raised a claim by way of O.A 73/2004 for counting their period of training towards qualifying period required for grant of benefit under the MACP scheme. This OA was disposed of by the learned Tribunal on 29.11.2004, by directing the petitioners to consider the claim of the respondents therein for grant of the benefits under the ACP scheme by reckoning the training period undergone by them. This order was assailed by the petitioners by way of W.P. (C) 8341/2009 which writ petition came to be dismissed on 11.09.2011. The order dated 11.09.2011 was unsuccessfully assailed by the petitioners before the Apex Court by way of SLP (Civil)No. 2584/2012. Upon the order dated 20.11.2004 passed in OA 73/2004 attaining finality, the petitioners extended the benefit of the said decision only to the applicants in the said OA.

5. Being aggrieved, the respondents approached the learned Tribunal by way of OA 1667/2019, which original application has been allowed under the impugned order by directing the petitioners to extend the benefits granted vide order dated 20.11.2004 in OA 73/2004 to the respondents herein.

6. In support of the petition, Mr. Vinnet Dhandha, learned counsel for the petitioners submits that the impugned order is liable to be set aside as the



learned Tribunal has erroneously come to a conclusion that the two years training period undergone by the respondents should be treated as qualifying service for grant of benefits under the ACP and MACP scheme. He submits that the period of two years during which the respondents were undergoing training as per the provisions of the Recruitment Rules for Topographical Division I Establishment, could not be counted towards their service and was therefore rightly excluded from the qualifying period for grant of benefits under the ACP/MACP scheme. He, therefore, prays that the impugned order be set aside.

7. On the other hand, learned counsel for the respondents supports the impugned order and submits that after the respondents joined the petitioner organization, the mere fact of them being sent on training could not imply that they were not in service during this 2 years training period. She further submits that once the petitioners has granted same relief to similarly placed persons like the applicants in OA 73/2004, they cannot be permitted to discriminate against the respondents by excluding their training period from the qualifying service. She, therefore, prays that the writ petition be dismissed.

8. Having considered the rival submissions of the parties, we may begin by noting hereinbelow the relevant extracts of the impugned order as contained in paras 4 and 5 thereof:

“4. Learned counsel for the applicants draws support from the appointment letters of the applicants wherein it finds mention that the applicants were appointed on 10.11.1986 and from the same very date they were sent for Training, one of the appointment orders is reproduced below:-

RAJESH MOHAN CHILDIYALL



SURVEYOR INDIA
No. C-3533/37-G-P

Central Circle Office
314-NAPIERTOWN
JABALPUR-482001

Central Circle Routine Order NO.23 DTD, 29th June 87

I. Appointment of Group 'C' Topographical Division I Estt. The under mentioned person whose particulars are given below, is hereby appointed as Topo Trainee Type 'A' in the temporary Group 'C' Topographical Division I Estt. Of No.48(P) Party (CC) with effect from the date as shown against him, on a Pay of Rs.1150/- p.m. in the scale of pay of Rs.1150-25 Illegible

Sl. No	Name	Date of Birth	Educational Qualification	Community	Date of appot.	Remarks
1.	Shri Rajesh Mohan Childiyl	17.03.63	B.Sc.	Hindu	10.11.86	Departmental Candidate

He has been medically examined and declared fit by the competent authority and his character and Antecedents were also verified by the District Magistrate, Dehradun and nothing found adverse against him, at the time of his initial appointment as TIT 'B' (Rep). He will governed by the terms and conditions of services as laid down in circular order NO.436 (Adm) as amended time to time. He has since been posted to NO 16 Party (STI) Hyderabad for T.T.T. A'S training with effect from No.10.11.86. The extra expenditure involved will be met from within the sanctioned budget grant of Surveyor of India for the year 1966-87 & 87-88 and debited to the appropriate head of account."

5. She further draws support from the service book of one of the applicants annexed at page 39. She states that the entry in the service book clearly establishes that the training period was subsequent to regular appointment and constitutes part of such an appointment without any interruption."



9. From a bare perusal of the aforesaid, it is evident that the learned Tribunal has allowed the O.A. preferred by the respondents by relying on its earlier orders passed not only in O.A.73/2004 but also in O.A. 2620/2012. It is the common case of the parties that the orders passed in these OAs were unsuccessfully assailed before the Apex Court and have thereafter been implemented by the petitioners.

10. In the light of the aforesaid, once the petitioners have included the training period as the qualifying period for the purposes of grant of benefit under the ACP/MACP scheme, we fail to understand as to why similar relief should not be granted to the respondents who are admittedly similarly placed as the applicants in OA 73/2004 and O.A. 2620/2012. There is no justifiable reason as to why the petitioners instead of implementing the impugned order have preferred the present misconceived petition and therefore, we find absolutely no reason to interfere with the impugned order.

11. The writ petition along with all pending applications stands dismissed in the aforesaid terms.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

MARCH 1, 2024
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