

(2023) 03 DEL CK 0183

In the Delhi High Court

Case No : Civil Writ Petition No. 3353 Of 2021, Civil Miscellaneous Application
No. 10217 Of 2021

Union Of India & Ors.

APPELLANT

Vs

Om Prakash & Ors

RESPONDENT

Date of Decision : 27-03-2023

Acts Referred:

Citation : (2023) 03 DEL CK 0183

Hon'ble Judges : V. Kameswar Rao, J;Anoop Kumar Mendiratta, J

Bench : Division Bench

Advocate : Ripu Daman Bharadwaj

Judgement

V. Kameswar Rao, J

1. The challenge in this writ petition is to an order dated January 30, 2020 passed by the Central Administrative Tribunal, whereby the Tribunal has allowed the Original Application ('O.A.', in short) and directed the petitioners herein to grant the respondents the second ACP benefits from due dates on notional basis and revise their pension payment order and pay the pension accordingly. The arrears have been limited to the last three years i.e., w.e.f. January 01, 2017 onwards without any interest.

2. The facts as noted from the record are, the respondents were appointed as Compositor Grade-II in Letter Press Unit ('LPU', in short), Government of India Press, Minto Road, New Delhi in the pay scale of Rs. 3050-?4590/- (revised) at various points of time. The respondent No.1 was appointed on October 23, 1972, the respondent No.2 was appointed on October 16, 1974 and the respondent No.3 was appointed on July 30, 1979. The next promotion post was that of Compositor Grade-I, which carried the pay scale of Rs. 4000-?6000/-.

3. It is the case of the parties that due to technological changes, the LPU in the press which was manually operated got changed to Photo Litho Unit ('PLU' in short), which is basically a computer based system. The respondents were

declared surplus in LPU and were re-deployed to the PLU. The designation in PLU was corresponding to the designation of Compositor Grade-I in LPU, called Offset Plate Maker and it was also in the pay scale of Rs. 4000-?6000, i.e., same as that of Compositor Grade-I. All the respondents were redeployed as Offset Plate Maker between January 08, 1998 to January 10, 1998. This was the first financial upgradation granted to the respondents.

4. The Assured Career Progression Scheme ('ACP Scheme' in short) came into being for all Central Government employees w.e.f. August 09, 1999. This scheme was also applicable to Government of India Press and envisaged two financial upgradation in 12 and 24 years of service if one was not promoted in this period.

5. The grievance of the respondent Nos.1 and 2 was that on August 09, 1999, when the ACP Scheme came into being, they had already completed 24 years of service and were granted only one financial upgradation by that time. Accordingly, they were due for second ACP benefits on that date, which has not been granted. The respondent No.3 was due for second ACP w.e.f. July 30, 2003, but was not granted.

6. When the 6th CPC was implemented w.e.f. January 01, 2006, the regime of Pay Band and Grade Pay was introduced. For the pay scale of Rs. 4000-?6000/-, the corresponding Grade Pay was Rs. 2400/-. All the respondents were granted the next higher Grade Pay of Rs. 2800 w.e.f. January 01, 2006 and it was counted as a financial upgradation. Thereafter, the MACP came to be implemented w.e.f. September 01, 2008, which envisages three financial upgradations on completion of 10/20/30 years of service, if, one was not promoted during these years. The respondents were granted third ACP benefit by way of Grade Pay Rs. 4200/-. Subsequently, the respondents retired from the service in the year 2014.

7. It is in respect of denial of second ACP benefits on completion of 24 years of service that the respondents had filed the O.A. before the Tribunal.

8. The case of the petitioners before the Tribunal was that the claim is belated as they should have raised the claim on August 09, 1999 or in 2003. They have kept silent all these years and as such the petition should be dismissed.

9. The Tribunal was of the view that respondents were appointed as Compositor Grade-II in LPU in the pay scale Rs. 3050-?4590/-, the next promotion post was of Compositor Grade-I in the pay scale of Rs. 4000-?6000/-. In view of the change of technology, they were re-deployed to the equivalent post of Offset Plate Maker which also carried the same pay scale of Rs. 4000-?6000/- and this was done between January 08, 1998 to January 10, 1998. Since all the respondents have completed 12 years of service on the said date, the re-deployment shall count towards first ACP benefits, for which the policy directives were issued. In respect of second ACP, the same was due, on completion of 24 years of service if they were not granted promotion.

10. It was stated by the Tribunal that the respondent Nos.1 and 2 had attained eligibility for grant of second ACP on August 09, 1999. This ACP was required to be granted to the said respondents on notional basis w.e.f. August 09, 1999. As regard the respondent No.3, the due date for second ACP benefit was July 30, 2003 and the same should be granted to him.

11. The submission of learned counsel for the petitioners is that the Tribunal has erred in not appreciating the fact that clarification of office memorandum dated May 19, 2009 issued by DoPT makes it clear that if appointment is made to higher pay scale either as a direct recruitment or on absorption basis or first on deputation basis and later on absorbed such appointment shall be treated as direct recruitment and past service/promotion shall not count for the benefits under the ACP.

12. According to the counsel, the Tribunal has also erred in not appreciating that DoPT letter dated September 01, 2008 introducing a new MACP scheme replacing the ACP Scheme. The New MACP Scheme stipulates respondent Nos.1 and 2 be granted grade pay of Rs. 4200/- under first MACP financial upgradation w.e.f. January 01, 2008 and respondents were granted grade pay of Rs. 4200/- financial upgradation under first MACP w.e.f. November 02, 2008 after completion of 10 years from the date of re-deployment.

13. This according to learned counsel is because of consequent absorption in PLU from LPU, the three respondents were redeployed on the higher post of Offset Plate maker in the scale of Rs. 4000-?6000/- from lower grade of Compositor Grade-II after completion of 6 months training. He submitted that the respondents herein had requested for grant of second ACP after completion of 24 years of service by including the service rendered before re-deployment to the post of Offset Plate maker but as per MACP scheme, their service could not have been counted. Similarly, the past service before re-deployment can be counted only in those cases where the employee was re-deployed/appointed in the same pay scale or lower scale of pay on redeployment.

14. Hence, according to him, the grant of second ACP to the respondents by the Tribunal is totally erroneous and is liable to be set aside.

15. On the other hand, the learned Counsel for the respondents would justify the order of the Tribunal, as according to him, service put in by the respondents at LPU need to be counted for the purpose of granting the benefit of the second ACP. According to him, the case of the petitioners that as the respondents have been granted higher scale of Rs. 4000-?6000 with the designation of Offset Plate Maker on absorption basis, the service of ten years need to be counted from the date of absorption and as such the MACP granted on completion of ten years is purely a misconceived case.

16. He states that the Tribunal was right in counting the service put in by them in LPU and directed the grant of second ACP and the same need not be interfered with. The Tribunal had rightly granted the second ACP to the respondents on

completion of 24 years of service from the initial date of appointment of the respondents in the Organisation and the same was given w.e.f. August 9, 1999 in respect of respondent Nos.1 and 2 and from July 30, 2003 in respect of respondent No.3. In other words, it is his submission that the grant of second ACP by the Tribunal was in conformity with the original ACP Scheme which contemplated in the absence of any promotion, financial upgradation shall be given on completion of 12 and 24 years of service. He seeks the dismissal of the writ petition.

17. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the respondents are entitled to grant of second ACP on completion of 24 years of service from the date of initial appointment.

18. The plea of the petitioners is primarily by relying upon OM dated May 19, 2009 of the DoP&T which in terms of paragraph 9 stipulates as under, defines the 'regular service' for the purpose of grant of MACP:

"9. '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."

19. From the reading of the above clause, it is clear that regular service for the purpose of MACP 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. In other words, the date of absorption would be the date from which the regular service for the purpose of MACP shall be determined.

20. In the case in hand, there is no dispute that the respondents who were earlier working in LPU were transferred and absorbed in PLU. The terms of appointment in PLU as noted from the Office Memorandum dated May 30, 1997 issued to the respondents, one such proforma in respect of respondent No.2 Budh Sen Sharma reads as under:

"SUBJECT: Permanent absorption by transfer of Compositors of LPU to the post of Offset Plate Maker in PLU - training thereof.

Shri Budh Sen Sharma, Compositor of Letter Press Unit is hereby transferred to the PLU w.e.f. 10.2.1998 for training in the Offset Plate Maker on the following terms and conditions

1. His training will be for a period of 6 months from the date of transfer.
2. On successful completion of 6 months training, he will be subjected to a Trade Test in Offset Plate Maker.
3. His training and trade test will not confer upon him the right to be permanently absorbed in the PLU.
4. On qualifying the test his case will be put up to the DPC for consideration of his name for permanent absorption to the post Offset Plate Maker.
5. On being permanently absorbed in the PLU as Offset Plate maker he will be on probation for a period of 2 years from the date of absorption. 6. His continuation in the post of Offset Plate maker will be consider to the subject to the successful completion of the probation period.
7. Once permanently absorbed in PLU as Offset Plate Maker, he shall not be allowed to revert back to his erstwhile post unless until he is found unfit for the post.
8. He shall be governed by all others relevant rules and regulations which are inforce and issued from time to time.”
21. The above Office Memorandum states that the respondents were transferred from LPU to PLU and after undergoing training for six months from the date of transfer, they shall be absorbed in PLU.
22. In view of the clause 9 of Annexure-1 of OM dated May 19, 2008, the regular service of the respondents was counted w.e.f. January 8/10, 1998 (date of transfer/absorption) on completion of ten years of service from that date and were granted the benefits under the MACP Scheme, i.e., they were granted grade pay of Rs. 4200/- w.e.f. September 1, 2008.
23. The service put in by them prior to 1998 was not considered for grant of benefit under the ACP Scheme rightly, so, in view of clause 9 which we have reproduced above. It may be stated that the vires of Clause 9 of the OM dated May 19, 2009, had not been challenged. So, the issue has to be decided from the perspective of Clause 9. The intent behind Clause 9 is the respondents having become surplus in LPU, were absorbed in PLU, which is akin to afresh appointment and any future benefits have to be granted by counting service from the date of absorption.
24. We note, the Tribunal has not considered the effect of clause 9 while giving the directions in the manner it did in the impugned order. It follows the conclusion arrived at by the Tribunal is a perverse finding. We are of the view that the direction of the Tribunal for grant of second ACP to the respondents could not have been granted. The petition is allowed and the impugned order dated January 30, 2020 passed by the Tribunal is set aside. No costs.

CM APPL. 10217/2021

In view of the above, this application is dismissed as infructuous.