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

\+ W.P.(C) 3974/2017

UNION OF INDIA & ORS ..... Petitioners

Through: Mr. Jaswinder Singh, Advocate.

versus

MADHU SUDAN & ORS ..... Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% **09.05.2017**

C.M. No. 17465-466/2017

1. Exemptions allowed, subject to all just exceptions.

2. The applications stand disposed of.

C.M. No. 17467/2017

3. Delay in re-filing is condoned.

4. The application stands disposed of.

W.P.(C) 3974/2017 and C.M. No. 17464/2017

5. The petitioners have preferred the present writ petition to assail the order dated 26.10.2015 passed by the Central Administrative Tribunal,

Principal Bench, New Delhi (Tribunal) in O.A. No.3204/2011. The Tribunal, by the impugned order, has allowed the Original Application preferred by the respondents and directed the petitioners herein to grant financial upgradation to the respondent applicants under the MACPs in the grade pay of Rs.4,200, Rs.4,600 and Rs.4,800 on completion of 10 years, 20 years and 30 years of regular service under the MACP Scheme.

6. The respondents were working as Civilian Switch Board Operators (CSBO for short) Grade- I and II with the Ministry of Defence. They joined services between the years 1976 and 1983. They claimed 3rd financial upgradation under the MACP Scheme in the grade pay of Rs.4,200, Rs.4,600 and Rs.4,800.

7. The respondents were beneficiaries under the Time Bound Promotion Scheme (TBPS) after 16 years and 26 years and drew benefits under the said scheme. The said benefit was granted to the respondents upon implementation of the directions issued by the Central Administrative Tribunal, Chandigarh Bench in O.A. No.459/HR/2002 dated 13.09.2002 in the matter of *Shri Balraj Singh Vs. Union of India & Others*, which was affirmed by the High Court, and thereafter, by the Supreme Court. Consequent upon implementation of the TBPS, the ACP Scheme introduced vide order dated 09.08.1999 was withdrawn so far as the CBSOs were concerned. The respondents were granted Time Bound Promotion in the pay scales of Rs.5000–8000 and Rs.5500–9000.

8. On implementation of the 6th Central Pay Commission Report in the year 2008, the pay scales of Rs.5000–8000, Rs.5500–9000 and Rs.6500–

10500 were merged in one pay band, i.e. PB-2 with Grade Pay of Rs.4200. As a result of the merger, the effect of financial upgradation given under the TBPS became ineffective. Consequently, the Government of India issued clarification/ instructions, which, inter alia, stated that the employees who had been granted financial upgradation under the ACP Scheme/ one TBPS in the erstwhile pay scales of Rs.5000–8000 and Rs.5500–9000 were eligible to get the next higher Grade Pay. Consequently, the respondents-who were granted financial upgradation in the pay scales of Rs.5000–8000 and Rs.5500–9000, which got merged and were granted Grade Pay of Rs.4200, were required to be given the Grade Pay of Rs.4600 under the second financial upgradation and Grade Pay of Rs.4800 under the third financial upgradation.

9. The petitioners herein opposed the relief sought by the respondents on the ground that since the respondent applicants had availed of the TBPS and the ACP Scheme had been withdrawn as it was not applicable to the respondents, MACP Scheme – being the substitute of ACP Scheme was also not made applicable to the respondent applicants. It was argued by the petitioners that in CSBO, promotion was granted and the corresponding financial upgradation accrued to the higher post. In the MACP Scheme, only financial upgradation is admissible. Thus, the claim of the respondents for grant of MACP benefits was opposed by claiming that the respondents could not switch over from a promotional scheme to financial upgradation scheme.

10. The Tribunal, while granting the relief sought by the respondents, took into account the fact that in case of Drivers, the Government had itself

allowed the concurrent application of both the TBPS and the MACP Scheme. Even in the Department of Post, wherein the TBPS was earlier operational, the MACP Scheme had been made applicable after the decision of the Central Administrative Tribunal, Mumbai Bench. The Tribunal also observed that since the MACP Scheme was a beneficial scheme, the respondents were also entitled to the benefit thereof and they had not been given an option to switch over to the MACP Scheme, which was more beneficial to the respondents.

11. The submission of learned counsel for the petitioners is that the respondent applicants could not have sailed in two boats at the same time, i.e. they could not avail of both the TBPS and the MACP Scheme. Learned counsel submits that under the MACP Scheme, it was specifically provided that the said Scheme shall not apply in respect of those who were covered by the TBPS.

12. Despite our query as to how the Drivers and the employees in the Department of Post were classified and treated differently from the respondents, there is no specific answer.

13. Even if one were to assume that a comparison could not be drawn between the respondents and the employees of the Department of Post since the said employees had got benefit of the MACP Scheme under an order passed by the Central Administrative Tribunal, Mumbai Bench, so far as the Drivers are concerned, they were granted benefit of the MACP Scheme by the Government on its own. Under the TBPS, only two stages of promotion after 16 years and 26 years after the date of initial appointment were

granted. Pertinently, under the ACP Scheme, two financial upgradations were available to the employees who could not get promotion on account of stagnation. However, under the MACP Scheme-introduced after implementation of the 6th Central Pay Commission Report in the year 2008, the Scheme provides for three financial upgradations, i.e. after 10 years, 20 years and 30 years of service. There appears to be no justification to deny to the respondents the third financial upgradation.

14. In these circumstances, we find no reason to interfere with the impugned order. The petition is, accordingly, dismissed.

VIPIN SANGHI, J

DEEPA SHARMA, J

MAY 09, 2017
B.S. Rohella