

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION Nos. 19725 & 19789 of 2017

COMMON ORDER: *(Per the Hon'ble Sri Justice Suresh Kumar Kait)*

Vide the present petitions, petitioners have assailed order dated 29.12.2016 passed in O.A.Nos.1594 of 2015 and 1595 of 2015 on the file of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad.

2. Since both the petitions have arisen from the same order as mentioned above, this Court has decided to dispose of the petitions by this common order.

3. For the sake of convenience, we are discussing the facts of W.P.No.19725 of 2017 which has been arisen from the order passed in O.A.No.1594 of 2015.

i) Respondent was appointed as Floor Assistant on 09.09.1977. Thereafter, he was promoted as Floor Manager vide proceedings dated 14.07.2011 on regular basis in PB-2 of Rs.9300-34800 and grade pay of Rs.4600/-. He retired from service on attaining the age of superannuation on 31.08.2014. While he was in service, on 14.02.2002, the petitioners issued orders, consequent upon granting of 2nd and 3rd Financial Upgradations under the Modified Assured Career Progression Scheme (for short 'MACP') dated 19.05.2009, which came into force w.e.f. 01.09.2009, fixing his pay, which was in the pay band (PB-2) of Rs.9300-34800 + GP of Rs.4600/-, in PB-2 of Rs.9300-34800 + GP of Rs.4,800/- w.e.f. 01.09.2008,

and in PB-2 of Rs.9300-34800 + GP of Rs.5,400/- w.e.f. 01.09.2008, vide order dated 17.01.2012. The respondent was also paid all the arrears as per the aforesaid granting of 2nd and 3rd Financial Up-gradations under the MACP Scheme.

ii) However, while the respondent was working as Floor Manager in the pay band of Rs.9300-34800 + GP of Rs.5,400/-, suddenly and without any notice, the petitioners re-fixed his pay on 25.10.2013, in the pay band of Rs.9300-34800 + GP of Rs.4,800/- after withdrawing the 2nd Financial Up-gradation and allowing the 3rd Financial Up-gradation w.e.f. 01.09.2008. The petitioners have also recovered an amount of Rs.2,90,000/- from the respondent by stating that the said amount was paid in excess, in view of the wrong granting of the Financial Up-gradations under the MACP Scheme.

4. Learned counsel appearing on behalf of the petitioners submits that initially, the respondent was appointed as Floor Assistant on 09.09.1977. 1st up-gradation was given on 09.08.1999 and thereafter he was promoted as Floor Manager on 14.07.2011. However, he was wrongly given 3rd up-gradation on 14.02.2013. Learned counsel argued that since the respondent was promoted on 14.07.2011, he was only entitled for 2nd up-gradation under the MACP scheme. However, he was wrongly granted 2nd and 3rd up-gradations under the MACP scheme vide order dated 14.12.2013 which has been revised vide order dated 20.12.2013.

5. It is not in dispute that 44 employees were given the benefits in the year 2012, but re-fixing has been done in respect of the respondent herein.

6. Learned counsel appearing on behalf of the respondent has drawn the attention of this Court to the order dated 14.02.2012 whereby 2nd and 3rd up-gradations were given to the respondent w.e.f. 01.09.2008. It is specifically mentioned that the pay band of Floor Manager before the grant of 2nd MACP was Rs.4,600/- and pay band on grant of 2nd MACP was Rs.4,800/-. Pay band on grant of 3rd MACP is Rs.5,400/- and date of next increment and pay is w.e.f. 01.09.2008. Since the respondent was appointed as Floor Assistant on 09.09.1977 and retired on 31.08.2014 on superannuation, he is entitled for 3rd up-gradation under the MACP scheme in the whole career of more than 33 years as Floor Assistant.

7. In the case of *Union of India and others Vs. Doordarshan Programme Professional Union and another*, the High Court of Delhi in W.P.(C) Nos.18034/2004 and 18035/2004, vide its order dated 27.10.2014, on a similar issue, confirmed the order dated 05.12.2012 passed by the Principal Bench of Central Administrative Tribunal, New Delhi.

8. It is pertinent to mention here that in the affidavit filed in support of the present petition, it is stated in paragraph No.8 as under:

“Further, the Directorate had decided in consultation with the Ministry to absorb the benefit of 2nd Financial Up-gradation in 1st up-gradation itself, as there was quantum jump in the pay scale of Floor Assistants owing to grant of 1st financial up-gradation (1st ACP) in the pay scale of Rs.6500-10500 (S-12) from the pay scale of Rs.4000-6000 (S-7). The instructions in this regard have been issued by the Directorate vide O.M.No.15/9/10/99-S1 orders for grant of 2nd financial up-gradation to the Floor Assistants. But some stations unaware of these instructions have sanctioned 2nd financial up-gradation and on coming to know this fact, were asked to re-fix the pay and recover the excess drawn pay & allowances from such employees. When clarification was sought,

the Ministry of Information & Broadcasting has obtained the clarification from DOP&T. Accordingly, the DOP&T vide ID No.47539/13/CR dated 10.07.2013 has clarified that any up-gradation availed during their career would be counted against the three up-gradations permissible under MACPs.”

9. Similar affidavit has been filed before the Central Administrative Tribunal which is re-produced in paragraph No.6 of the impugned order. Considering the same and relying upon the judgments mentioned therein, the learned Tribunal has allowed the O.A. filed by the respondent. We find no force in the submission of the learned counsel for the petitioners that since the respondent was promoted as Floor Manager on 14.07.2011, despite he served as Floor Assistant more than 33 years, he is not entitled for 3rd up-gradation under the MACP scheme in his whole service. The promotion of the respondent as Floor Manager has nothing to do with the up-gradation under the MACP scheme which has to be granted after completion of 10, 20 and 30 years of service. Undisputedly, the respondent has completed more than 30 years of service.

10. In view of the above, we find no illegality or perversity in the order passed by the Tribunal. Accordingly, both the writ petitions are dismissed. No order as to costs.

10. At this juncture, learned counsel appearing on behalf of the petitioners seeks two months time to implement the order passed by the learned Tribunal. However, the fact remains that the petitioners has been taking time in C.C.Nos.93 & 94 of 2017 to comply with the order. Keeping in view the request made by the learned counsel for the petitioners, we hereby direct

the petitioners to comply with the order passed by the learned Tribunal within four (4) weeks from the date of receipt of a copy of this order.

Consequently, miscellaneous applications if any pending in the writ petitions shall stand closed. No order as to costs.

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

22nd February, 2018
cbs



THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI



W.P.Nos.19725 & 19789 of 2017
(dismissed)

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