

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.08.2019

CORAM

The Honourable Mr.JUSTICE K.K.SASIDHARAN
and
The Honourable Ms.JUSTICE P.T.ASHA

W.P.No.2203 of 2017

E.R.Gunasekaran

...Petitioner

Vs.

1. Union of India,
Represented by its Chairman,
Ordinance Factories Board,
10-A, S.K. Bose Road,
Kolkatta- 700 001.
2. The General Manager,
Ordinance Clothing Factory,
Avadi, Chennai- 600 054.
3. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai.

...Respondents

Prayer :

Writ Petition is filed under Article 226 of the Constitution of India praying to issue writs or orders or directions more particularly writ of certiorarified mandamus after calling for the connected records leading to the issue of the impugned order passed by the 3rd respondent dated 26.10.2016 passed in O.A.No.1370 of 2014 and quash the same, and for a consequential direction to the respondents to grant grade pay of Rs.4200/- to the applicant under MACP scheme or by stepping up of his pay on par with his juniors with effect from the date, he is eligible for the upgradation or for stepping up of pay with all attendant benefit, like arrears, etc. and pass orders.

For Petitioner : Mr.Muthukumar

For Respondents : Mr.K.Gunasekar

O R D E R

(Order of the Court was delivered by P.T.ASHA, J)

This writ petition is filed challenging the order passed by the Madras Bench of the Central Administrative Tribunal dismissing the application moved by the applicant, to quash the order impugned and to grant him grade pay of Rs. 4200/- by way of financial upgradation under MACP scheme or stepping up his pay on par with his juniors with effect from the date he had become eligible for upgradation or for stepping up of his pay with all attendant benefits like arrears, etc.

2. The facts in brief for the disposal of the above Writ Petition are as follows:

The applicant was originally appointed as a labourer on 19.10.1981 at the respondent factory. Thereafter on 11.12.1991 he was appointed as a civilian motor driver ordinary Grade [CMD (OG)]. The petitioner was thereafter promoted to CMD Grade II on 1.01.2001 and further to CMD Grade-I on 02.04.2007. The petitioner had discharged his duties diligently and blemishlessly.

3. The petitioner was appointed as a CMD Grade I and fitted in the Pay Band-1 with Grade pay Rs.2800/-. The petitioner came to know that identically placed employees in the respondent factory had been granted Grade Pay of Rs.4200 in Pay Band-2. He therefore approached the authorities for granting him the proper Grade Pay on par with the other similarly placed employees. His written representation dated 12.04.2014 was rejected vide communication dated 11.06.2014 by the second respondent. This prompted the petitioner to file OA No.1370 of 2014 on the file of the Madras Bench of the Central Administrative Tribunal.

4. The respondents had filed a reply statement contending that the petitioner was not entitled to the relief claimed by him in view of the fact that he had got three promotions from the date of his appointment, first from labourer to CMD (OG), from CMD (OG) to CMD-II and from CMD-II to CMD-I. Therefore it is the contention of the respondent that the applicant was not entitled to the 3rd financial upgradation. It was further contended that as per the instructions issued regarding MACP for Central Government Civil employees which had taken effect from 1.09.2008 financial upgradation under MACPs was to be counted from the date of entry grade on completion of 10,20 and 30 years respectively. Therefore the respondents would contend that the entry Grade as far as the writ petitioner was concerned was his initial appointment as a labourer and therefore he was not entitled to the relief claimed by him.

5. The Central Administrative Tribunal by its order dated 26.10.2016 dismissed the original application by accepting the contentions of the respondents that the writ petitioner has received 3 promotions from the initial entry as a labourer. The order passed by the Ernakulam Bench of the Central Administrative Tribunal in O.A.No.167 of 2013, on which reliance was placed by the learned counsel for the applicant, was rejected by the Tribunal on the ground that the facts in that case did not have relevance to the facts of the case on hand. Challenging the said order the writ petitioner is before this Court.

6. Mr.Muthukumar, learned counsel appearing for the petitioner would contend that the Office Memorandum dated 19.05.2009 of the Ministry of Personnel Public Grievances and Pensions (Department of personnel and Training), Government of India sought to introduce the "Modified Assured Career Progression Scheme (MACPS) for Central Government Civilian Employees" which is shown as Annexure-I of the said Office Memorandum. Rule 11 of the Scheme details what regular service is and the same would read as follows:

11. 'Regular Service' shall also be applicable to work charged employees, if their service conditions are comparable with the staff of regular establishment".

He would argue that as per the Illustration No. 28, the petitioner would fall within the purview of the illustrations given in Clause 28 (A) (iii) Which reads as follows:

However, if he gets 2nd promotion after 5 years of further service in the pay PB-II in the Grade Pay of Rs.4200 (Asstt. Grade/Grade "C") i.e. on completion of 23 years (8+10+5 years) then he would get the 3rd financial upgradation after completion of 30 years i.e. 10 years after the 2nd ACP in the PB-II in the Grade Pay of Rs.4600.

He would further argue that the respondents have clearly committed an error in holding that the petitioner had been given three promotions totally overlooking the entry as only CMD (OG) and not as a labourer, since he had on his own effort qualified to be appointed as a CMD (OG) in the year 1991. Therefore he had got two promotions and not three as contended by the respondents.

7. Mr.Mr.Gunasekar, learned counsel appearing on behalf of the respondents would submit that the petitioner had got three

promotions calculated from the date of his original entry that is on 19.10.1981 and therefore there is no error in the order of the Tribunal.

8. A reading of clause 9 of the MACP Scheme makes it clear that the original appointment of the petitioner as a labourer cannot be counted as a regular service, and on the other hand, it is only from the date on which he had been appointed as CMD (OG); which is 11.12.1991. The MACP Scheme has been introduced in order to grant financial upgradation to the employees who have been stagnated in a particular post without any career upgradation and this scheme provided respite to them. The petitioner who was originally appointed as labourer and through his sheer merit and effort had been appointed as a Civilian Motor Driver Ordinary Grade [CMD (OG)] on 11.12.1991. The petitioner who had been appointed as CMD (OG) on 11.12.1991 was promoted as CMD Grade-II on 01.01.2001 that is within 10 years. Therefore it is clear that he had the requisite length of service for the section of financial upgradation under the MACP. Thereafter he had been promoted as CMD Grade-I on 02.04.2007 and he had retired in the year 2015. Therefore in all he had put in over 23 years of service and therefore he is entitled to the financial upgradation.

9. In the result the Writ Petition is partly allowed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mrn

To

1. The Union of India,
Represented by its Chairman,
Ordinance Factories Board,
10-A, S.K. Bose Road,
Kolkatta- 700 001.
2. The General Manager,
Ordinance Clothing Factory,
Avadi, Chennai- 600 054.

3. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai.

+1cc to M/S.Paul & Paul, Advocate, S.R.No.75109

+1cc to Mr.K.Gunasekar, Advocate, S.R.No.74967

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BS (CO)
CS/24/10/2019



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