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

+ W.P.(C) 4195/2015 and C.M. No.34324/2018

UNION OF INDIA & ORS

..... Petitioners

Through: Mr. Amit Mahajan & Mr. Randeep
Sachdeva, Advocates.

versus

SHAIRA A KHAN

..... Respondent

Through: Mr. Ayushya Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

22.01.2019

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The Union of India has preferred the present writ petition to assail the order dated 17.11.2014 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) in O.A. No.804/2013. The respondent had preferred the said Original Application with the plea that she should be granted the 3rd MACP benefit with effect from the date on which she completed 30 years of service. The reason why the said benefit was denied to the respondent was that she had been given the Non-Functional Upgradation w.e.f. 24.06.2005 (Notionally w.e.f. 01.01.1996 and actually from 03.10.2003). Thus, the issue that arose for consideration before the Tribunal was whether the said Non-Functional Upgradation was liable to be treated as a promotion/ upgradation under the MACP Scheme. The Tribunal, by the impugned order, held in favour of the respondent and,

consequently, directed that she should be granted 3rd MACP benefit with effect from the date on which she completed 30 years of service.

The same issue arose before the Ernakulam Bench of the Tribunal and the Tribunal in its order dated 06.09.2012 in O.A. Nos.870/2011 & 873/2011 held that the Non-Functional Scale of Rs.8000-13500 (revised pay-scale Rs.13600-39100 with Grade Pay of Rs.5400) granted w.e.f. 01.01.1996 is neither by way of promotion nor ACP/ MACP Schemes. This decision of the Ernakulam Bench of the Tribunal was upheld by the Kerala High Court in O.P.(CAT) No.919/2013(Z) on 04.07.2013. The Kerala High Court in the said decision held as follows:

“It was also found that the non-functional scale granted to the respondents was neither by way of promotion nor under the ACP/MACP Schemes. Learned counsel for the petitioners contended that the non-functional scale granted to the respondents should be treated as financial upgradation and then, they were not entitled to financial upgradation from the grade pay of Rs. 6600/- to Rs. 7600/-. At the same time, the learned counsel admitted that the non-functional scale was applicable to all the employees covered by the orders in respect of the same and it was not financial upgradation coming under the ACP/MACP Schemes. Therefore, such an argument advanced by the learned counsel has no legs to stand.

The Tribunal has considered the questions in their right perspective and arrived at right conclusions. We find no infirmity or jurisdictional error with the orders passed by the Tribunal.”

The Special Leave Petition preferred before the Supreme Court against the said decision has also been dismissed after grant of leave vide Civil Appeal Nos.2941-42/2014 on 06.02.2018. Thus, the issue that the

grant of Non-Functional Scale did not tantamount to promotion or grant of benefit under the ACP/MACP Schemes stands approved by the Supreme Court.

In the light of the aforesaid, the present petition is also liable to be dismissed. The same is, accordingly, dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

JANUARY 22, 2019

B.S. Rohella