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

+ **W.P.(C) 5927/2018 & CM APPL Nos. 613/2020, 614/2020 & 615/2020**

DELHI DEVELOPMENT AUTHORITY AND ORS. Petitioners
Through **Ms. Sriparna Chatterjee, Advocate**

versus

SATENDER SINGH AND ORS. Respondents
Through **Mr. Anand Mishra and Mr. Amrendra Kumar Singh, Advocates**

+ **W.P.(C) 5932/2018 & CM APPL No. 23155/2018 (stay)**
DELHI DEVELOPMENT AUTHORITY Petitioner
Through **Ms. Sriparna Chatterjee, Advocate**

versus

BALESHWAR AND ORS. Respondents
Through **Mr. L.R.Khatana, Advocate for Respondents No.1,5,6 & 7**

+ **W.P.(C) 476/2019 & CM APPL No. 2122/2019 (stay)**
DELHI DEVELOPMENT AUTHORITY Petitioner
Through **Ms. Sriparna Chatterjee, Advocate**

versus

NARENDER KUMAR AND ORS. Respondents
Through **Mr. Anand Mishra and Mr. Amrendra Kumar Singh, Advocates**

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
09.01.2020

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W.P.(C) 5927/2018, 5932/2018 & 476/2019

1. The Delhi Development Authority ('DDA') has filed these 3 petitions against a common order dated 1st December, 2017 passed by the Central Administrative Tribunal, Principal Bench-III ('CAT') in three sets of OA Nos. 2005/2014, 1945/2014 and 434/2016. The prayers in all the above OAs by the Respondents, who were working as Malis in the DDA, was for a direction to the DDA to grant each of them the benefits of the second financial upgradation under the Assured Career Progression ('ACP') scheme upon their having completing 24 years of continuous qualifying service, together with interest.
2. In resisting the above plea, the case put forth by the DDA was that with effect from 1st September, 2008, the Modified Assured Career Progression ('MACP') Scheme had become operational and that the Applicants i.e. Respondents herein were no longer entitled to receive the benefits under the ACP scheme. It was contended that the ACP scheme was valid only until 31st August, 2008, by which date none of the Respondents had completed 24 years of service. It was submitted that since the MACP scheme was introduced by the Office Memorandum ('OM') dated 19th May, 2009, superseding the earlier ACP scheme, the question of granting any benefit under the ACP scheme after 31st August, 2008 did not arise.
3. The Respondents, on the other hand, contended that the MACP scheme could not have been given retrospective effect from 1st September, 2008 and that since it was introduced only on 19th May, 2009, the vested right in each of the Respondents to the benefits of the second financial upgradation under the ACP scheme could not be taken away.

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4. In the impugned judgment dated 1st December, 2017, the CAT accepted the plea of the Respondents and directed the DDA to consider their cases for grant of the benefits of the second financial upgradation under the ACP scheme till 19th May, 2009, the date of issuance of the OM under which the MACP scheme was introduced.
5. Initially, the DDA filed two writ petitions i.e. W.P.(C) No. 5927/2018 & 5932/2018, which came up for hearing on 29th May, 2019, on which date while directing notice to issue to the Respondents. the operation of the impugned order was stayed. Subsequently, the third petition being W.P.(C) No. 476/2019 was filed against the common order of the CAT in OA No.434/2016. On 21st January, 2019 while directing notice to issue, this Court stayed the operation of the impugned order of the CAT.
6. This Court has heard the submissions of learned counsel for the parties.
7. Before proceeding to examine the submissions, it requires to be noticed that in *Union of India v. Balbir Singh Turn (2018) 11 SCC 99* the Supreme Court was considering the issue of whether in respect of the Armed Forces Personnel, the benefit of the MACP is applicable from the date of the recommendations of the 6th Central Pay Commission ('CPC') i.e. 1st January, 2006 or only from 1st September, 2008, as was decided by the Central Government.
8. In trying to defend the decision of the Central Government, its counsel

before the Supreme Court relied *inter alia* on the decision dated 1st September, 2016 of a Division Bench of this Court in LPA No. 405/2016 (***Delhi Urban Shelter Improvement Board v. Shashi Malik***). The Supreme Court noticed the said submission and certain other decisions of the High Courts of Kerala and noted that “none of these judgments is applicable because the issue whether the MACP is part of the pay structure or allowances were not considered in any of these cases”.

9. The Supreme Court in ***Balbir Singh Turn*** (*supra*) categorically held that although there could be some “gainers and some losers”, the “intention of the Government was clear that this Scheme which was a part of the pay structure would apply from 1st January, 2006.” It noted that the Central Government’s Resolution dated 30th August, 2008 deciding to implement the recommendations of the 6th CPC fixed the applicable date as 1st January, 2006. It was held that this decision of the Cabinet could not have been modified by issuing any executive instructions limiting the applicability of the MACP from a later date.

10. Learned counsel for the Respondents before us sought to distinguish the judgment in ***Union of India v. Balbir Singh Turn*** (*supra*) by contending that it applies only to the Armed Forces and not to civil establishments like the DDA. Secondly, it is submitted that the Central Board of Excise and Customs (‘CBEC’) had on 19th January, 2018 issued a clarification to the effect that it was not feasible to extend the benefit of the MACP from 1st January, 2006 onwards. Reliance was placed on the judgment of this Court in ***Delhi Urban Shelter Improvement Board v. Shashi Malik*** (*supra*) to

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contend that the Respondents could not be denied the benefit of the second financial upgradation under the ACP scheme, since the MACP scheme was announced only on 19th May, 2009, whereas their right to such benefits under the ACP benefit accrued prior to that date.

11. It must be noted here that the question in *DUSIB v. Shashi Malik (supra)* was, as articulated in para 19 of the judgment, “whether or not financial upgradation as payable under the ACP scheme between 1st September, 2008 to 19th May, 2009 (granted under the ACP scheme) can be withdrawn and taken away? “The Court noted that the question that had arisen was in relation to whether the grant of financial upgradation under the ACP scheme was more beneficial to the employee. In that context, it was held that “the benefit of financial upgradation under the ACP scheme cannot be taken away.”

12. Clearly by the time this Court decided *Shashi Malik (supra)*, the decision of the Supreme Court in *Balbair Singh Turn* had not been rendered. After the decision of the Supreme Court in *Balbair Singh Turn*, it becomes abundantly clear that the MACP benefit is available across the board from 1st January, 2006 onwards. While the decision in *Balbair Singh Turn (supra)* may have been rendered in the context of the Armed Forces, there have been numerous other judgments subsequently rendered by the Division Benches of this Court extending that benefit to members of the Central Armed Police Forces (‘CAPFs’) and even to the civilians in the Central Government (see, for e.g., the decision dated 13th November, 2018 of this Court in W.P.(C) No. 4760/2018 in *R.K.Sharma v. Union of India*). In any event, since the

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DDA has decided to adopt the MACP, it would have no option but to extend the benefit of the MACP, in terms of the judgment in **Balbir Singh Turn** (*supra*), with effect from 1st January, 2006 onwards.

13. It must be noted here that even the CAT did not have the benefit of the judgment of the Supreme Court in **Balbir Singh Turn** when it decided the present cases on 1st December, 2017. The outcome undoubtedly would have been different had it been so.

14. In the present cases, since there is no question of the benefit granted to the Respondents under the erstwhile ACP scheme being taken away, the apprehension which led to the issuance of the circular/order dated 9th January, 2019 of the CBEC will not hold true. In any event, it is doubtful whether the CBEC can issue such a direction which appears to fly in the face of the judgment of the Supreme Court in **Balbir Singh Turn** (*supra*). However, that is not an issue directly involved in the present petitions.

15. Learned counsel for the Respondents pointed out how on the basis of the applicability of the MACP with effect from 1st September, 2008 the DDA was seeking to make recoveries from some of the Respondents who were erstwhile Malis/Class-III or Class-IV employees and that this was in any event impermissible in terms of the judgment of the Supreme Court in **State of Punjab v. Rafiq Masih AIR 2015 SC 696**.

16. The Court has no doubt that after the present decision, the DDA will be re-issuing orders as regards the grant of the MACP benefits to the

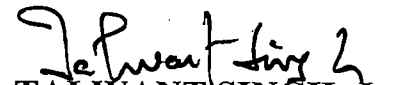
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Respondents with effect from 1st January, 2006 and any consequential orders passed by it will keep in view the aforementioned judgment of the Supreme Court in *Rafiq Masih* which bars recoveries being made from Class-III and IV employees after their retirement.

17. Accordingly, the petitions are disposed of by setting aside the impugned orders of the CAT and substituting it with the direction that the DDA will grant the benefit of the MACP to the Respondents, subject to their fulfilling the eligibility requirements, with effect from 1st January, 2006 and issue consequential orders in terms of the above directions within a period of eight weeks from today. The pending applications are also disposed of.



S. MURALIDHAR, J.


TALWANT SINGH, J.

JANUARY 09, 2020

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