

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 6390 of 2020

Union of India and others

.....

Petitioners

Mr. D. Rath, CGC

Vs.

Kanhu Charan Das and another

.....

Opposite Parties

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

21.07.2022

Order No.

03.

This matter is taken up through hybrid mode.

2. Heard Mr. D. Rath, learned Central Government Counsel appearing for the Petitioners.

3. The Union of India and its functionaries being the Petitioners, have filed this Writ Petition seeking to quash the order dated 18.07.2019 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 702 of 2012, by which direction was given to them to consider the case of Opposite Party No.1 for 3rd up-gradation under the MACP Scheme in accordance with the extant Rules and Guidelines on the issue and as per the Judgment dated 5.8.2014 of Delhi High Court in the case of *Union of India v. Shakeel Ahmad Burney (W.P.(C) No. 4131 of 2014)* and communicate their decision to Opposite Party No.1 through a speaking and reasoned order within three months from the date of receipt of a copy of this order.

4. The factual matrix of the case, in brief, is that Opposite Party

No.1 joined the service initially in the cadre of Postman, vide order dated 30.10.1974, and thereafter joined as Clerk on 05.10.1979, pursuant to the order dated 04.10.1979. In the Gradation list dated 31.10.2008, Opposite Party No.1 was shown senior to one Pitabas Mishra by placing them at serial Nos. 9 and 10 of the Gradation list. Both of them availed the benefit of the TBOP and BCR Schemes under which the Pay Scales of the employees, after completion of certain number of years of service, are upgraded to the next higher scale. The Government introduced the MACP Scheme, vide Office Memorandum dated 18.9.2009, with effect from 01.09.2008. The case of Opposite Party No.1 is that the benefit of the MACP Scheme was extended to the junior-Sri Pitabas Mishra, but Opposite Party No.1 was denied such benefit. Opposite Party No.1 filed a representation dated 30.9.2009 followed by a reminder stating therein that his case is covered by the order dated 22.5.2012 of Jodhpur Bench of the Tribunal.

5. Pursuant to the notice issued by the Tribunal, the present Petitioners filed their Counter Affidavit stating therein that though Opposite Party No.1 is claiming the benefit of 3rd MACP at par with his juniors, but as per the Guidelines, under the MACP Scheme, the up-gradation benefit is personal to an employee and no senior can claim higher pay/grade pay under MACP on the ground that his junior was allowed the same benefit. It was further stated that Opposite Party No.1 had availed one promotion when he was posted as Clerk from Postman and then availed two financial up-gradations under TBOP and BCR, for which, he cannot get one more up-gradation under MACP, since as per the guidelines of MACP, an employee can get maximum three

promotions or up- gradations. But the said fact was controverted by Opposite Party No.1 by filing the Rejoinder Affidavit and citing several Judgments. It was stated by Opposite Party No.1 that his claim is covered under the said judgments and hence he is entitled to the benefit at par with similarly placed employee. Opposite Party No.1 cited the order passed by the Central Administrative Tribunal, Cuttack Bench in O.A. No. 200/2013, claiming that the said case is similar to his case. It was also stated that an employee under similar circumstances as Opposite Party No.1, has been allowed the benefit of 3rd up-gradation under MACP. Consequentially he relied on the order of the Central Administrative Tribunal, Madras Bench in OA 1088/2011 (*D.Sivakumar v Union of India & Ors.*) and the order of High Court of Judicature at Madras in W.P. No.30629/2014.

6. The Tribunal, after going through the pleadings available on record, considered the same in extenso and passed the order directing the Petitioners to consider the case of Opposite Party No.1 for 3rd up-gradation under the MACP Scheme in accordance with the extant Rules and Guidelines on the issue and as per the Judgment dated 5.8.2014 of Delhi High Court in the case of *Shakeel Ahmad Burney* and communicate their decision to Opposite Party No.1 through a speaking and reasoned order within three months from the date of receipt of a copy of this order.

7. It appears that instead of deciding the matter within a period of three months with regard to the applicability of the Judgment of the Delhi High Court in the case of *Shakeel Ahmad Burney*, the Petitioners filed this Writ Petition assailing the impugned order

passed by the Central Administrative Tribunal under Annexure-4 to this Writ Petition. There is no doubt that Opposite Party No.1 was appointed initially as a Postman and thereafter appointed as a Clerk and as per the Judgment of the Tribunal of Madras Bench and the High Court of Madras, as well as the High Court of Delhi, similarly situated employees had been allowed the benefit of MACP. Such orders of the respective High Courts have been upheld by the apex Court. But the same was not adhered to in the case of Opposite Party No.1 by the Authorities.

8. In view of the above, this Court is of the considered opinion that the Tribunal is well justified in passing the impugned order, which does not require any interference by this Court.

9. Accordingly the Writ Petition merits no consideration and the same stands dismissed.

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE

Arun/Banita