

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6313 OF 2023

1. Shashikant Govind Kulkarni, }
Age- 70 years, Floor Manager (Retd.) }
Doordarshan Kendra, Mumbai- 411 }
030. R/at -906, Lotus Tower, B-Wing, }
Gawand Baag, Pokharan road no. 2, }
Upvan, Thane – 400 601. }

2. Chandrakant Keshav Deorukhakar, }
Age-67 years, Floor Manager (Retd.), }
Doordarshan Kendra, Mumbai – 411 }
030. R/at -129 D/78 Jaihind Nagar }
Welfare Society, Navneet Chowk, }
Worli Koliwada, Mumbai – 400 030. }

3. S. D. Telawane, }
Age -70 years, Floor Manager (Retd) }
Doordarshan Kendra, Mumbai-411 }
030, R/at-A-508, Suryodaya CHSL, }
Nagusayajichi Wadi New Prabhadevi, }
Near Samna Press, Prabhadevi, }
Mumbai – 400 025. }

... Petitioners.

V/s.

1. The Union of India, through The }
Secretary, Ministry of Information }
And Broadcasting, Rafi Marg, New }
Delhi- 110 001. }

2. The Director General, Prasar }
Bharati, Doordarshan Bhawan, }
Copernicus Marg, New Delhi- }
110 001. }

3. The Additional Director General }
 (Prog.), Doordarshan Kendra, Worli, }
 Mumbai – 400 030. }

4. The Pay and Accounts Officer, }
 Central Pension Accounting Office, }
 Ministry of Finance, Trikot III }
 Complex, Bhikaji Cama Place, }
 New Delhi. }

... Respondents.

.....

Ms Annie Nadar for the Petitioners.

Mr. R. R. Shetty, for the Respondents- (UOI).

.....

**CORAM : NITIN JAMDAR AND
 MANJUSHA DESHPANDE, JJ.**

DATE : 6 November 2023.

P.C. :

The Petitioners are employees of Doordarshan Kendra, Mumbai, and have retired from service on attaining age of superannuation in the year 2013-14. The Petitioners being aggrieved by the order passed by the Central Administrative Tribunal, Mumbai, dated 9 March 2023 passed in Original Application No. 261 of 2018, have approached this Court. The Petitioners are challenging the order whereby prayers of the Petitioners in Original Application No. 261 of 2018 to the extent of refusal to grant of prayer clauses (e), (ee) and (f) has been challenged in the present Petition.

2 In the Original Application, the Petitioners had challenged the order dated 19 December 2017, whereby the applicants/Petitioners have been denied the 2nd Financial Up-gradation as per the ACP Scheme, in the pay scale of next promotional post of Production Executive, as per the PB 2 + GP of Rs.4800/- from the date of completion of 24 years of service of each of the applicants. According to the Petitioners, they were initially appointed to the post of Floor Assistant in the Doordarshan Kendra, Mumbai. The post carried pay scale of Rs.330-480/-, which was revised to Rs.1200-2040/- w.e.f. 1 January 1986. The said pay scale further underwent revision to Rs.4000-6000/- w.e.f. 1 January 1996. On completion of 12 years of regular service as per the terms of the ACP Scheme of 9 August 1999, all of them were granted 1st Financial Up-gradation and their pay was fixed in the pay scale of Rs.6500-200-10,500/-. The Petitioners thereafter received the revised pay scale under 6th Pay Commission, which was basic pay in fixed PB 2 + GP Rs.4600/- in each of the case w.e.f 1 January 2006. The Petitioners thereafter were promoted to the post of Floor Manager on 14 July 2011 on adhoc basis and they were granted pay scale of PB 2 + GP Rs.4600/- vide order dated 21 July 2011.

It is the case of the Petitioners that Respondent No. 3 thereafter issued an order dated 13 February 2012 granting 2nd Financial Up-gradation to the Petitioners under the MACP Scheme w.e.f. 1 September 2008, and their pay was fixed in PB 2 + GP

Rs.4800/-. The Petitioners thereafter were promoted as Floor Manager on regular basis from 8 December 2012.

3 On completion of 30 years of service, each of the Petitioners became entitled to the benefit of 3rd MACP Scheme by fixing their pay scale in PB 2 + GP Rs.5400/- per month. Petitioner No. 1 has been granted PB 2 + GP Rs.5400/- w.e.f. 20 August 2012. Petitioner No. 1 retired on 30 April 2014. As per his last pay drawn, his pension and retirement benefits were required to be calculated on the basis of PB 2 + GP Rs.5400/-. However, the same was calculated on the basis of PB 2 + GP Rs.4800/- by lowering his pay, his pay fixation was done. Petitioner No. 1 made a representation against lowering of his pay fixation, which came to be rejected on 16 April 2015.

4 Petitioner Nos. 2 and 3, who also completed 30 years of service on 9 September 2013 and 12 March 2014 respectively, were not granted 3rd MACP benefit by fixing their pay in the pay scale of PB 2 + GP Rs.5400/- per month. On the contrary, their pay was refixed downward by order dated 11 March 2015 and 8 August 2014 and withdrew the 2nd ACP benefit of GP Rs.4800/- which was already granted and refixed their pay in PB 2 + GP Rs.4600/-. An amount of Rs.1,19,932/- was also recovered by the Respondents from Petitioner No. 1 from his leave encashment benefit. An amount of Rs.1,34,750/- was recovered from Petitioner No. 2 towards excess payment of salary for the month of February 2008 to February 2015

and an amount of Rs.1,30,987/- was recovered from Petitioner No. 3 from his retirement benefits vide a communication dated 19 December 2017. The Petitioners feeling aggrieved by the action of the employer Respondent approached the Tribunal by filing Original Application No. 261 of 2018.

5 The Respondents-Authorities have filed their reply to the Original Application. It is not disputed by them that the Petitioners are the permanent employees and are directly recruited as Floor Assistants. The Petitioners have been granted 1st ACP benefit in the pay scale of Rs.6,500–10,500/- and they are entitled to regular promotion in the post of Floor Manager. According to the Respondents, the Petitioners were granted adhoc promotion as Floor Manager and also granted 2nd MACP benefit w.e.f 1 September 2008. It is contended that the pay scale of Floor Manager was Rs.5000 to 8000/-. However, after revision in Prasar Bharati by order dated 25 February 1999, the pay scale has been enhanced to Rs.6500 -10,500/-

6 It was later on revealed that the revised pay scale of Rs.6500-10,500/-, which was granted to the Floor Manager, was without concurrence of the Government of India, Ministry of Finance, Department of Expenditure. Therefore, Prasar Bharati issued OM dated, 12 March 2001, to the effect that grant of pay scale of Rs.6500-10,500/- as against the Recruitment Rules granting pay scale of Rs.5000-8000/-in the post of Floor Manager was to be

treated as 1st ACP, therefore, the pay scale for the post of Floor Manger ought to be Rs.5000-8000/-. The Government of India, therefore, decided to treat up-gradation of pay scale of Rs.5000-8000/- of Floor Manager to Rs.6500-10,500/- as one up-gradation under ACP/MACP Schemes. The 1st ACP of Rs.6500-10,500/- was treated as advance for Floor Manager. Hence, in view of the said decision to treat the up-gradation of the scales of Floor Manager to Rs.6500-10,500/- as one up-gradation. As a result, the last up-gradation admissible to the Petitioners obviously was of GP of Rs.4800/- according to the Respondents. As a result, the movement of the Petitioners by way of 3rd MACP to the GP of Rs.5400/- came to be withdrawn.

7 It was contended that the Petitioners are not entitled to any relief in view of the decision taken by the Respondents and also in case of excess payment made previously, it is liable to be recovered as per law laid down by the Hon'ble Supreme Court.

8 The Petitioners contended before the Tribunal that, the grounds raised by the Respondents were already raised in Original Application No. 322 of 2001 filed by one Mr. Madan Sharma V/s The Secretary. After taking into consideration their objections by the Central Administrative Tribunal, Principal Bench, has negated the same by order dated 5 December 2002. The said order was further subject matter of challenge in Writ Petition Nos. 18034 of 2004 and 18035 of 2004. Both the Writ Petitions have been dismissed by

order dated 18 December 2015. The 2nd and 3rd MACP benefits have been granted to the various Floor Assistants but the same has been denied to the present Petitioners. Therefore, they have filed the Original Application No. 261 of 2018.

After taking into consideration the rival submissions of both the parties, the Tribunal has been pleased to hold that the Petitioners were similarly situated, as that of applicants in Original Application No. 322 of 2001, and the said judgment of the Central Administrative Tribunal, Principal Bench was affirmed by the Delhi High Court was a judgment in rem. Therefore, the said benefit is required to be extended to all who are similarly situated.

9 The Central Administrative Tribunal has in detail dealt with the said issue and has passed order in Original Application No. 261 of 2018, giving directions that, the Petitioners are entitled to 2nd Financial Up-gradation as per ACP Scheme in PB 2 + GP of Rs.4800/- on the date of completion of 24 years of service by each of the Petitioners. It was further directed that the Respondents shall refund the recovery made from the Petitioners, however the interest on refund of recovery was refused by the Tribunal.

So far as the prayer of the Petitioners for 3rd benefit of Financial Up-gradation is concerned, the Tribunal has made certain observations, which were not in the pleadings either of the parties or supported by any document placed on record. The Tribunal in

paragraph 21 of its order has observed that since the Petitioners before the Tribunal have been granted benefit of ACP I and ACP II alongwith one promotion, they were not entitled for 3rd benefit of Financial Up-gradation on completion of 30 years of service and it would amount to violation of provisions of ACP/MACP Schemes.

10 The learned Counsel for the Petitioners while making the submissions has pointed out that, the said observations of the Tribunal amounts to traveling beyond the pleadings of the parties and has not been supported by any document. Therefore, ignoring the same, the prayer of the Petitioners as regards 3rd Financial Up-gradation needs to be granted. When the learned Counsel for the Respondents- UOI was called upon to elaborate about the observations made by the Tribunal for denying the 3rd Financial Up-gradation benefit, he was also not able to support the said observations with any document or pleadings in his reply affidavit. Therefore, in view of the fact that the prayer of the Petitioners to the extent of 2nd ACP benefit and refund of the recovered amount is already granted by the Tribunal, but the 3rd Financial Up-gradation of the MACP Scheme on completion of 30 years of service is concerned, the observations of the Tribunal while refusing the said prayer are not clear and are vague.

11 Considering that the said observations are not supported by any document on record, we deem it appropriate to remand the matter back to the Central Administrative Tribunal, Mumbai, to

decide the issue of extending the benefit of 3rd Financial Up-gradation under MACP Scheme to the Petitioners afresh by passing a reasoned order.

While passing the order at this stage, the learned Counsel for the Petitioners has requested this Court that, the Tribunal may be directed to decide the Original Application within a stipulated period. If the Petitioners make any such application to the Tribunal, the Tribunal may pass appropriate order on the same.

In view of the aforementioned background, the Writ Petition is disposed of in terms of abovementioned directions.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)