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WP.No. 12133 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **15.03.2023**

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

W.P.No. 12133 of 2016

A.Anandaraj

...Petitioner

Versus

1. The Union of India
Represented by its Secretary to Government
Ministry of Home Affairs
New Delhi.
2. The Director General
Central Reserve Police Force
CGO Complex
Lodhi Road
New Delhi - 110 003.
3. The Deputy Inspector General of Police
Central Reserve Police Force
Group Centre
Avadi, Chennai - 600 065.
4. The Commandant
No.77, Battalion
Central Reserve Police Force
Poonamallee
Chennai - 600 056.

...Respondents



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Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Office Order passed by the fourth respondent dated 24.09.2015 in his Office Order No.P.VII.8/2015-77-EC-I and quash the same insofar as the Item No.72 is concerned and to direct the respondents to grant the MACPS benefits from 17.03.2011.

For Petitioner : Mr.A.S.Mujibur Rahman
For Respondents : Mr.K. Ramanamoorthy,
Central Government Standing Counsel

ORDER

This writ petition has been filed challenging the order passed by the fourth respondent dated 24.09.2015 in his Office Order No.P.VII.8/2015-77-EC-I, quash the same insofar as Item No.72 is concerned and consequently, to direct the respondents to grant the MACP benefits from 17.03.2011.

2. The case of the petitioner is that he joined as Constable GD in the Central Reserve Police Force, on 17.03.2001. While so, when he was working under the Commandant 19 Battalion Waranal, Andhra Pradesh, the punishment of with-holding of one increment for a period of one year, was awarded on 30.09.2008. The order was passed disagreeing with the findings of the Enquiry Officer in respect of Article of Charges II and III by the Commandant 19 Battalion holding that the petitioner was genuinely ill and



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the petitioner had not remained in his house willfully. The petitioner has not filed any appeal, since it is a minor punishment. While so, the Modified Assured Career Progression Scheme (MACPS) was introduced with effect from 19.05.2009. The Screening Committee shall be constituted in each Department to consider the case for grant of financial upgradation under the Scheme in force. The above said scheme has been introduced, considering the recommendation of VI Pay Commission to grant three financial upgradation under the Scheme in the intervals of 10, 20 and 30 years of continuous regular service. Therefore, the petitioner claims that he is entitled to the said Scheme on completion of 10 years i.e., on 17.03.2011. The punishment was ordered on 30.09.2008 and the increment for the period from 01.07.2009 to 30.06.2010, was with-held. Therefore, even assuming the fact that the punishment has been awarded for one year, the petitioner is entitled to the benefits under the Scheme with effect from 17.03.2012. Pursuant to the same, the fourth respondent passed impugned order dated 24.09.2015 based on the Departmental Screening Committee. Aggrieved by the same, insofar as Sl.No.72 is concerned and having no other efficacious alternative remedy, the petitioner approached this Court under Article 226 of the Constitution of India.



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3. Counter affidavit has been filed on behalf of the respondents stating that, after fulfillment of the enlistment standard for the post of Constable (General Duty), the petitioner was enlisted in CRPF as CT/GD on 17.03.2001. While he was posted for official duty in 19th Battalion, Warangal, Andhra Pradesh of the CRPF, the petitioner committed an act of mis-conduct in his capacity as a member of the force, which is punishable under Section 11(1) of CRPF Act, 1949 and that the petitioner had been deserted from the lines of Unit Head Quarters with effect from 31.05.2007 without prior sanction/permission from the competent authority. Further, the petitioner disobeyed the order of competent authority and that the petitioner failed to report for duty and he willfully remained absent for the period from 31.05.2007 to 25.03.2008 [i.e. total 299 days] without prior permission/sanction from the competent authority. Thus, the punishment imposed upon the petitioner by the Commandant of the 19 Battalion, is in order. As per Rule 23 of [CCS(CCA)] Rules, 1965, a Government Servant may have the remedy to prefer an appeal against the impugned order therein before the Appellate Authority, within 30 days from the date of issuance of impugned order passed by the disciplinary authority. But the petitioner has



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not preferred any appeal before the Appellate Authority. Although the competent disciplinary authority had not agreed with the report of the Enquiry Officer with regard to Article of Charges -II and III., the petitioner has submitted photocopies of the Medical documents in support of his illness in every stage of enquiry. After perusing the medical records, the competent authority felt that he was genuinely ill and not remained in his house willfully and taking treatment at a Hospital in Hyderabad. Thus, the competent disciplinary authority held the petitioner guilty of leaving the Unit Headquarters on 31.05.2007 at 15.00 hrs, without obtaining prior permission, because of his misconduct, in exercise of powers vested with the Commandant under Section 11 (1) of Central Reserve Police Force [CRPF] act 1949 read with Rule 27 of the CRPF Rules 1955. The competent authority had imposed the penalty of "withholding of one increment" for a period of one year without cumulative effect, with effect from 30.09.2008 to 29.09.2009 vide Office Order No. P.VIII.1/2008-19-EC-II, dated 30.09.2008. Later, the punishment was modified as Imposing the penalty of withholding of one increment for a period of one year without cumulative effect, from the date of increment accruing to the official, after issuance of final order, vide amendment order No.P.VIII.01/09-19-EC-III, dated



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16.01.2009. Hence, the petitioner has claimed that he is entitled for MACP Scheme after completion of 10 years of service on 17.03.2011, but the punishment was ordered on 30.09.2008 and the increment for the period from 01.07.2009 to 30.06.2010, was withheld and on 01.07.2010 the increment that has been withheld has been restored. Therefore, even assuming that the punishment has been awarded for one year, as such, he is entitled for MACPS benefits with effect from 17.03.2012. Hence, there is no violation of Rules/instructions in force issued by the Central Government as well as the guidelines issued by the Department while granting the 1st financial up-gradation under MACP Scheme to the petitioner. Therefore, the respondents pray to dismiss the above writ petition.

4. Heard the learned counsel for the petitioner and the learned Central Government Standing counsel for the respondents and perused the materials available on record.

5. On a perusal of the records, it is seen that the petitioner joined as Constable (General Duty) in the Central Reserve Police Force on 17.03.2001. While he was serving under the Commandant 19 Battalion, Warangal,



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Andhra Pradesh, by order dated 30.09.2008, the punishment of withholding of one increment for a period of one year was awarded in respect of Articles I, II and III, namely, the petitioner A. Anand Raj 015030514 CT/GD of F/19 BN, CRPF, while functioning as CT/GD in Hqr/19, BN, committed an act of misconduct in his capacity as a member of the Force, which is punishable under Section 11 (1) of CRPF Act, 1949, as he remained absent from 31.05.2007 to 25.03.2008 without prior sanction/permission from the competent authority. When he was working, he has found guilty of disobedience of the orders in discharge of duties in his capacity as a member of the Force, which is punishable under Section 11 (1) of the CRPF Act, 1949, in that, he failed to comply with orders of this Office directing him to report for duty, vide letter No.L.II-1/2007-EC-II-19, dated 19.06.2007 and letter No.P.VIII-1/2007-EC-II-19, dated 20.08.2007.

6. In the above context, as per Para No.18 of GOI OM.NO. 35034/3/2008-Estt(D), dated 19.05.2009 it is clearly mentioned that in the matter of disciplinary/penalty proceedings, grant of benefit under the MACP Scheme shall be subject to the Rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of the CCS (CCA)



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Rules, 1965 and instructions issued thereunder. In this regard, APAR grading in respect of the petitioner during the following period as intimated by 77 Bn, CRPF signal No. A.XII.3/2023-77-CB dated 14.03.2023 is as under:-

Sl.No.	Year	Grading
1.	2008	NIC
2.	2009	Good
3.	2010	Satisfactory
4.	2011	Satisfactory
5.	2012	Average
6.	2013	Good
7.	2014	Good
8.	2015	Good

7. Eligibility Conditions For Promotion:-

(A) Constable (GD/BUG/MALI/PTR) To Head Constable:-

a) Must have completed minimum five years service as Constable (GD/Bug/Mali/Painter) from the date of enlistment including three years service in a duty Bn.

b) Must have qualified Section Commander Course or Head Constable Promotional Course (SCC or HCPC).

c) Service records should be good viz. must not have major punishment and adverse report in Confidential Card (APAR) in preceding five years.

d) Out of last five years grading in Confidential Card (APAR), there must be at least 'Good' including the grading of latest year i.e., the year preceding the



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drawal of Appd List.

e) Must be in medical category SHAPE-One as per instructions existing on medical SHAPE - system.

7. The contention of the petitioner in Para No.7 of the affidavit is totally not acceptable on the plea that the orders for punishment of withholding one increment for a period of one year, without cumulative effect from the date of accruing next increment, was issued by the Commandant 19 Bn CRPF vide order No. P.VIII.01/2009-EC.II-19 dated 16.01.2009 and as such, the punishment should have been effective from 1st July 2009 onwards, as the date of increment in respect of all Central Government employees had been fixed on 1st July of every year. Accordingly, the petitioner's one increment has been withheld for the period from 01.07.2009 to 30.06.2010. But as per promotional norms, as envisaged in Standing Order No.01/2015, record of service should be good, viz., must not have major punishment and adverse report in the confidential card in the preceding five years and the same is applicable for granting MACP Scheme also. As such, due to the above punishment, his 1st financial up-gradation under MACP Scheme i.e., from 01.07.2010 to 30.06.2011; 01.07.2011 to 30.06.2012; 01.07.2012 to 30.06.2013; 01.07.2013 to 30.06.2014; and 01.07.2014 to 30.06.2015 has been postponed from 01.07.2010 to



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30.06.2015 and was allowed w.e.f., 01.07.2015 in the pay scale of Rs.5200-20200(PB-1) with grade pay of Rs.2400/- which is an order, as per the orders/instructions. Hence, the contention of the petitioner is not correct and not maintainable at the belated stage.

8. It is also seen that as per Annexure I of Government of India, DOPT OM.No.35034/3/2008-Esst(D) dated 19.05.2009, there shall be three financial up-gradations under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years of service. Financial up-gradations under the Scheme will be admissible, if a person has spent 10 years of service continuously in the same Grade Pay.

9. It is further seen that, as per Sl.No.18 of Annexure-I of Government of India, OM dated 19.05.2009 read with letter dated 06.08.2009, Directorate General, CRPF,, in the matter of disciplinary/penalty proceedings, grant of benefits under the MACPS shall be subject to Rules governing normal promotion. Such cases shall therefore be regulated under the provisions of the CCS (CCA) Rules, 1965 and instructions issued thereunder. Further, the punishment awarded to the petitioner was within 10 years of his regular



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service and in the matter of disciplinary/penalty proceedings for grant of benefits under the MACP Scheme, shall be subject to governing normal promotion. Therefore, the contentions of the petitioner are not correct and irrelevant. A Board comprising Chair-person, member -I, Member - II and Co-opted Member, had screened the records of the petitioner and found him suitable for grant of 1st financial up-gradation under MACP Scheme w.e.f. 01.07.2015. The 1st financial up-gradations under MACP Scheme w.e.f. 01.07.2015, was granted to the petitioner vide Commandant 77 Bn Office Order No. P.VII.8/2015-77-EC.I, dated 24.09.2015 which is according to the provisions contained in the MACP Scheme.

10. It is crystal clear that in accordance with the provisions contained in Government of India, Ministry of Personnel, Public Grievances and Pension, (Department of Personnel and Training) OM No. 35034/3/2008-Esst-(D), dated 19.05.2009 and also as per Para No. 19 of the DIGP (Esst), Directorate General, CRPF, New Delhi Letter No. P.VII-52/2009-Esst, dated 06.08.2009, in the matter of disciplinary/penalty proceedings, grant of benefit under the MACP Scheme shall be subject to Rules governing normal promotion. Hence, the 1st financial up-gradation under MACP Scheme



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granted to the petitioner w.e.f. 01.07.2015 in the pay scale of pay Rs.5200/- -
Rs.20,200/- (PB-1) with Grade Pay of Rs.2,400/- is correct as per the Rules
in force.

11. Hence, for the reasons stated above, there is no interference in the
impugned order passed by the 4th respondent, dated 24.09.2015 in his Office
Order No. P. VII.8/2015-77-EC-I and the writ petition fails and the same is
liable to be dismissed.

12. With the above observations, the writ petition is dismissed. No
costs.

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Index by : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

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