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W.P.No.22042 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.22042 of 2016

Patan Sahebjan

... Petitioner

Vs.

- 1.The Union of India,
Rep. by its Secretary to Government,
Ministry of Home Affairs,
New Delhi.
- 2.The Director General,
Central Industrial Security Force,
Head Quarters,
No.13, CGO Complex,
Lodhi Road, New Delhi – 110 003.
- 3.The Inspector General,
Central Industrial Security Force,
South Sector, Near War Memorial,
Chennai – 600 009.
- 4.The Deputy Inspector General,
Central Industrial Security Force,
South Zone, Besant Nagar,
Chennai – 600 090.
- 5.The Group Commandant,
Central Industrial Security Force,
Group Head Quarters, Cochin.
- 6.The Deputy Commandant,



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Central Industrial Security Force,
NMPT, Mangalore.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records to the order passed by the second respondent in his Order No.V-31014/37/2015/RAHA-1/143, dated 15.02.2016 and quash the same and to direct the respondents and to grant 2nd MACP benefits from 03.08.2003 and 3rd MACP from 03.08.2013 to the petitioner and the arrears.

For Petitioner : Mr.A.S. Mujibur Rahman

For Respondents : Mr.N. Ramesh

ORDER

The petitioner herein had joined the services of the Central Industrial Security Force, which comes under the Central Armed Forces, on 03.08.1983 and later was promoted as Head Constable. Since he had completed 30 years of service, he claimed for entitlement to 3rd Modified Assured Career Progression Scheme (hereinafter called as 'MACP Scheme'). His claim was denied through the impugned order dated 15.02.2016, which is put under challenge in the present Writ Petition.

2. The petitioner herein was granted 1st financial upgradation under



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MACP Scheme on 30.01.2004 and 2nd financial upgradation was granted on 01.01.2011. However, his 3rd financial upgradation on completion of 30 years, was denied upon his non-qualification on fulfilment in the pre-promotional norms.

3. When MACP Scheme came up for consideration in the case of ***'Union of India & others Vs. Ex. HC/GD Virender Singh'*** made in SLP (Civil) No.16442 dated 22.08.2022, the Hon'ble Supreme Court had taken note of the submissions made by the Additional Solicitor General that the personnel working in the Central Armed Forces would be granted financial benefit under the MACP Scheme on completion of prescribed years of regular service by relaxation in cases where, they could not be sent for participation in pre-promotional course, on account of administrative or other reasons. By observing that the members of the Central Armed Forces are doing duty for the nation and that they are deprived of adequate promotional avenues and facing hardship, it was ordered that a liberal, pragmatic and ameliorative approach requires to be made to succour genuine grievances of such personnel. The relevant portion of the order reads as follows:-



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.... “11. On the third aspect, we should record the concession rightly made by the Additional Solicitor General during the course of the hearing that the personnel working in the Central Armed Forces would be granted financial benefit under the MACP Scheme on completion of prescribed years of regular service by relaxation in cases where, on account of administrative or other reasons, they could not be sent for participation in pre-promotional course. The appellant-Union of India has agreed to accept the directions given by the Delhi High Court in the case of *Ram Avtar Sharma v. Director General of Border Security Force*⁹ in this regard. A liberal, pragmatic and ameliorative approach is required to succour genuine grievances of the personnel doing duty for the nation, owing to which they forgo participation in pre-promotional courses. Accordingly, the third question is answered against the appellant-Union of India.

12. In view of the aforesaid discussion, the appeals filed by the Union of India are partly allowed and impugned judgments, to the extent they hold that the MACP Scheme applies with effect from 1.1.2006 and that under the MACP Scheme the employees are entitled to financial upgradation equivalent to the next promotional post, are set aside. MACP Scheme is applicable with effect from 1.9.2008 and as per the MACP Scheme, the entitlement is to financial upgradation equivalent to the immediate next grade pay in the hierarchy of



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the pay bands as stated in Section 1, Part A of the First Schedule to the Central Civil Services (Revised Pay) Rules, 2008. The third issue, which relates to the fulfilment of pre-promotional norms for grant of financial upgradation, is decided against the appellant-Union of India to the extent that this would not be insisted in the case of the Central Armed Forces personnel where, for administrative or other reasons, they could not be sent or undergo the pre-promotional course.....”

(emphasis supplied)

4. When the respondents themselves have taken a stand that a relaxation would be considered for the financial upgradation on completion of 12 years in the Central Armed Forces and the Hon'ble Supreme Court has also directed them to take a liberal, pragmatic and ameliorative approach for such personal. Placing reliance on the earlier benchmarks and posing it as an impediment for grant of financial upgradation, would be opposed to their very own stand, as well as the observations of the Hon'ble Supreme Court in the aforesaid decision. Thus, depriving the petitioner of 3rd financial upgradation under MACP Scheme, cannot be sustained.

5. The petitioner herein has now reached the age of superannuation and retired from services on 01.03.2020. As such, it would be appropriate



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to direct the respondents to pass notional orders, for grant of 3rd financial upgradation under the MACP Scheme on completion of 30 years of service.

6. In the result, the impugned order dated 15.02.2016 passed by the second respondent, is hereby set aside. Consequently, there shall be a direction to the second respondent herein, to pass notional orders for grant of 3rd financial upgradation to the petitioner, under the Modified Assured Career Progression Scheme ('MACP Scheme'), on completion of 30 years of his service, from the date of his original appointment. Such orders shall be passed atleast within a period of four (4) weeks from the date of receipt of a copy of this orders.

09.01.2023

Speaking Order

Neutral Citation: Yes

Index: Yes

Internet: Yes

Issue order on 24.01.2023

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To



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1. Secretary to Government,
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Ministry of Home Affairs,
New Delhi.

2. The Director General,
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No.13, CGO Complex,
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M.S.RAMESH,J.

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