

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

Judgment reserved on: 12.04.2023.

% **Judgment delivered on: 15.05.2023.**

+ LPA 240/2023 & CM APPLs. 17457/2023, 17458/2023

M J PRASAD

..... Appellant

Through: Mr. Chirayu Jain, Ms. Meghana De,
Ms. L Gangmei, Ms. Sakshi
Dewangan, Advocates

versus

GARRISON ENGINEER CENTRAL & ORS

.... Respondents

Through: Mr. Apoorv Kurup, CGSC with
Mr. Ojaswa Pathak, Ms. Nidhi Mittal,
Advocates for UOI
Mr. Tushar Sannu, Mr. Devvrat
Tiwari, Advocates for R-2 & R-3

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present LPA arises out of an order dated 15.03.2022 passed by the Learned Single Judge in W.P.(C) No. 10809/2020 titled ***M. J. Prasad vs. M/S Garrison Engineer (Central) And Ors..***

2. The undisputed facts of the case reveal that a Writ Petition was preferred before this Court by the Garrison Engineer (Central), Military Engineer Service against order dated 30.10.2019 passed by the Regional

Labour Commissioner, Central (RLC, Central) in the case of Shri. M. J. Prasad Vs. Garrison Engineers (Central), by which the Labour Commission has directed recovery of Rs. 1,95,980/- from the Garrison Engineer.

3. Pursuant to the order dated 30.10.2019, the Sub-Divisional Magistrate has issued notices on 27.07.2020 and 20.08.2020 for recovery of the aforesaid amount under Section 136 of the Delhi Land Reforms Act, 1954 (DLR Act), and for attaching the properties under the control of Garrison Engineer, Military Engineer Services.

4. The facts of the case further reveal that the Appellant (Respondent No.1 in the Writ Petition) was appointed as Wireman with effect from 07.09.1982 and continued up to 19.04.1984 as a daily wager, and an order was passed regularising his services with effect from 12.11.1984.

5. The services of the Appellant were terminated on 15.11.1985 on the ground that he was appointed in spite of a ban on recruitment by Government of India. Being aggrieved by the termination order, the Appellant filed a complaint on 02.09.1987 before the Central Government Industrial Tribunal (CGIT) praying for his reinstatement in service.

6. The CGIT by an order dated 16.06.2000 dismissed the claim of the Appellant and the termination order was upheld.

7. The Appellant workman, thereafter, preferred a Writ Petition before this Court being W.P.(C) No. 6796/2001 titled ***M. J. Porashad Vs. A.G.E.B.R.&T. Garrison Engineer (Central) & Anr.*** This Court has set aside the termination by judgment dated 17.04.2012, directing the reinstatement of the Workman with 50% backwages.

8. The order passed by the Learned Single Judge was unsuccessfully challenged by the Respondent Garrison Engineer by filing an LPA i.e. LPA 764/2012, and a Division of this Court dismissed the said LPA by an order dated 04.01.2013. A Special Leave Petition (SLP) was also preferred, in the matter by the Respondent, i.e. SLP (C) No. 14018/2013, and the Hon'ble Supreme Court has dismissed the said SLP by an order dated 13.11.2014.

9. The Appellant Workman on 18.11.2014 filed a complaint before the RLC, Central under Section 29 and 2(ra) read with Item No. 13 of the Fifth Schedule and Section 25U of the Industrial Disputes Act, 1947 (I.D. Act) praying for prosecution of the Garrison Engineer, Central for not complying with the order passed by this Court in W.P.(C) No. 6769/2012.

10. Another Writ Petition was preferred by the Appellant herein before this Court i.e. W.P.(C) No. 8858/2014 seeking implementation of the order dated 17.04.2014 passed in W.P.(C) No. 6796/2012. This Court by an order dated 12.12.2014 issued directions to the Garrison Engineer for compliance.

11. The Respondent Garrison Engineer in light of the various orders passed by this Court, made payments to the Appellant totaling to Rs. 16,45,898/- through a cheque dated 23.02.2015 and the amount was paid towards 50% backwages for the period with effect from 15.11.1985 to 31.07.2015 and 50% for the period with effect from 01.08.2012 to 21.04.2015.

12. It is pertinent to note that a certain amount was still due to be paid to the Workman. The Respondent by a demand draft dated 01.12.2016, paid to

the Appellant Workman an amount of Rs. 5,14,066/-, the remaining amount for the period from 17.04.2012 to 21.04.2015.

13. A copy of the chart furnishing all minute details pertaining to the amounts paid to the Appellant Workman is reproduced as under:

“PAYMENT IN RESPECT OF MES-371450 SH M J PRASAD, ELECT (SK) OF GARRISON ENGINEER (CENTRAL) WHO WILL BE RE-INSTATE IN SERVICE WEF 17.4.2012 (PAYMENT WEF 17 APR 2012 TO 21 APR 2015) Unit: GE(Central) under AGE E/M Sub Divn

S. No.	Month Year	DUES						Remarks DA Fixed
		Pay Band	Grade Pay	TA not applicable	DA	HRA	Total	
1.	17 Apr 12 to (14 days)	9340	1900		7306	3372	10228	65%
2	May 12	9340	1900		7306	3372	21918	
3.	Jun 12 `	9340	1900	`	7306	3372	21918	
4.	Jun 12	9340	1900		7306	3372	21918	72%
5.	Aug 12	10770	1900		9122	3801	25593	72%
6.	Sep 12	10770	1900		9122	3801	25593	
7.	Oct 12	10770	1900		9122	3801	25593	
8.	Nov 12	10770	1900		9122	3801	25593	
9.	Dec 12	10770	1900	`	9122	3801	25593	
10.	Jan 13	10770	1900		10136	3801	26607	80%
11.	Feb 13	10770	1900		10136	3801	26607	
12.	Mar 13	10770	1900		10136	3801	26607	
13.	Apr 13	10770	1900		10136	3801	26607	
14.	May 13	10770	1900		10136	3801	26607	

15.	Jun 13	10770	1900		10136	3801	26607	
16.	Jul 13	11150	1900		11745	3915	28710	90%
17.	Aug 13	11150	1900		11745	3915	28710	
18.	Sep 13	11150	1900		11745	3915	28710	
19.	Oct 13	11150	1900		11745	3915	28710	
20.	Nov 13	11150	1900		11745	3915	28710	
21.	Dec 13	11150	1900		11745	3915	28710	
22.	Jan 14	11150	1900		13050	3815	30015	100%
23.	Feb 14	11150	1900		13050	3815	30015	
24.	Mar 14	11150	1900		13050	3815	30015	
25.	Apr 14	11150	1900		13050	3815	30015	
26..	May 14	11150	1900		13050	3815	30015	
27.	Jun 14	11150	1900		13050	3815	30015	
28.	Jul 14	11150	1900		14392	4035	31877	107%
29.	Aug 14	11150	1900		14392	4035	31877	
30.	Sep 14	11150	1900		14392	4035	31877	
31.	Oct 14	11150	1900		14392	4035	31877	
32.	Nov 14	11150	1900		14392	4035	31877	
33.	Dec 14	11150	1900		14392	4035	31877	
34.	Jan 15	11150	1900		15199	4035	32684	113%
35.	Feb 15	11150	1900		15199	4035	32684	
36.	Mar 15	11150	1900		15199	4035	32684	
37.	Apr 15 up to 21 Apr days	11150	1900		15199	4035	22879	
Total							1028132.00	
50% of Total Amount Already paid							514066.00	
50% of Total Amount to be paid							514066.00	

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AEE EM
For GE (Central)
Delhi Cannt.

14. The Appellant Workman not being satisfied with the payments made to him in the matter, which was done strictly in consonance with the order passed by the High Court, served a demand notice upon the Respondents on 18.05.2016 claiming financial benefits under the ACP/MACP Scheme and claimed an amount of Rs.7,10,046/- on account of ACP/MACP for the year 1999, and 100% backwages for the period with effect from 18.04.2012 to 21.04.2015. The Appellant Workman also filed a complaint seeking recovery of the amount due to him by taking recourse to Section 33 C (1) of the I.D. Act before the RLC, Central.

15. A notice was issued to the Garrison Engineer, Military Engineer Service to attend the proceeding on 24.04.2017 and a detailed and exhaustive reply was filed in the matter informing the RLC, Central about the payments made in the matter and the reasons for not granting the benefits under the ACP/MACP to the Appellant Workman. The RLC, Central issued a show-cause notice dated 11.07.2019 seeking explanation for non-payment of Rs. 1,95,980/-, and a reply was filed by the Garrison Engineer, Military Engineer Service on 29.07.2019. The RLC, Central directed the Garrison Engineer to appear in person before him and the RLC, Central finally issued an order dated 30.10.2019 directing the payment of Rs. 1,95,980/- to the Appellant Workman.

16. The RLC, Central also took steps for recovery of the said amount and the recovery certificate was forwarded to the SDM, Delhi Cantt. for recovering the amount by taking recourse to Section 146 of the DLR Act. It

is in those circumstances that the underlying Writ Petition was preferred before this Court.

17. The Learned Single Judge after hearing the parties at length has dismissed the Writ Petition. Paragraphs 30 to 45 of the order dated 15.03.2022 passed by the Learned Single Judge read as under:

“30. A perusal of the above would show that the Workman had not merely sought reinstatement but also continuity of service, back wages and other benefits akin to a regular employee, in his Statement of Claim before the CGIT, but clearly the said relief was not sought before the High Court. Therefore, the Court took the facts and circumstances into consideration, including the fact that the Workman had worked only for a short period as a regular employee and directed “only 50% of his back wages” to be paid along with reinstatement. In effect, therefore, the relief(s) of grant of continuity of service or consequential benefits was neither prayed for nor granted by the High Court. The reliefs granted and due to the Workman, thus attained finality vide the order of the High Court dated 17th April, 2012. Thus, the submission of ld. counsel for the Workman that in all cases where reinstatement is directed, continuity of service and consequential benefits would be automatic, cannot be accepted in the light of the above legal position and the order of the ld. Single Judge only granting reinstatement with 50% back wages has attained finality.

Grant of MACP/ACP benefits not automatic without satisfaction of prescribed criteria

31. A further factor to be considered is that the grant of MACP/ACP benefits, as per the applicable policy of the Management is not automatic for all employees and is contingent upon satisfaction of certain specified criteria. The benefits of ACP/MACP in career progression, are usually granted to employees in order to avoid stagnation. Employees are permitted to take some exams/tests to avail of career

progression and if they qualify for the same, MACP/ACP benefits are granted. The Supreme Court in Anil Kumar (supra) observed in respect of MACP/ACP benefits, in a case where the appellant had challenged rejection of his claim for financial upgradation by the Council for Scientific and Industrial Research (CSIR), as under:

“The grant of MACP benefit is not a matter of right and it is after the Screening Committee finds that the officer meets the benchmark that an upgradation can be granted.”

32. *In the present case, the office memorandum of the Management dated 9th August, 1999, which provided for MACP/ACP benefits reads as under:*

*“The Fifth Central Pay Commission in its Report has made certain recommendations relating to the Assured Career Progression (ACP) Scheme for the Central Government civilian employees in all Ministries/Departments. The ACP Scheme needs to be viewed as a ‘Safety Net’ to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. Accordingly, after careful consideration it has been decided by the Government to introduce the ACP Scheme recommended by the Fifth Central Pay Commission with certain **modifications** as indicated hereunder:-*

xxx xxx xxx

3. GROUP ‘B’, ‘C’ AND ‘D’ SERVICES/POSTS AND ISOLATED

POSTS IN GROUP ‘A’, ‘B’, ‘C’ AND ‘D’ CATEGORIES

3.1 While in respect of these categories also promotion shall continue to be duly earned, it is proposed to adopt the ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Keeping in view all relevant factors, it has, therefore, been decided to grant **two financial upgradations** [as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 (in relation to Group 'C' and 'D' employees) entered into with the Staff Side of the National Council (JCM)] under the ACP Scheme to Group 'B', 'C' and 'D' employees on completion of **12 years** and **24 years** (subject to condition no.4 in Annexure-I) of regular service respectively. Isolated posts in Group 'A', 'B', 'C' and 'D' categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees (including those with temporary status), ad-hoc and contract employees shall not qualify for benefits under the aforesaid Scheme. Grant of financial upgradations under the ACP Scheme shall, however, be subject to the **conditions** mentioned in Annexure-I.

xxx xxx xxx

4. Introduction of the ACP Scheme should, however, in no case affect the normal (regular) promotional avenues available on the basis of vacancies. Attempts needed to improve promotion prospects in organisations/cadres on functional grounds by way of organizational study, cadre reviews, etc as per prescribed norms should not be given up on the ground that the ACP Scheme has been introduced.

xxx xxx xxx

6. SCREENING COMMITTEE

6.1 A departmental Screening Committee shall be constituted for the purpose of processing the cases for grant of benefits under the ACP Scheme.

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8. The ACP Scheme shall become operational from the date of issue of this Office Memorandum.”

33. A perusal of the said OM dated 9th August, 1999 shows that there are separate requirements for each of the group of employees to avail of ACP/MACP benefits. The same has various conditions as to which kind of employees are entitled to these benefits. It also contemplates the setting up of a Screening Committee for the purpose of processing the cases for grant of benefits under the ACP scheme. The OM is quite detailed and clear and, therefore, it would not be apposite to argue or hold that grant of MACP/ACP benefits by the Management qua employees governed by this OM is automatic. The requirements, the eligibility conditions, and the procedure for such grant having been prescribed, the same cannot be granted by merely reading it as part of ‘consequential benefits’ or ‘continuity of service’. As per the clarifications issued on 21st December, 2000, and 10th December, 2007, the grant of MACP/ACP benefits requires that a trade test would have to be passed by the workmen in order to be entitled for upgradation. This clarification was on the record of the RLC but does not find any mention in the impugned orders.

Scope of proceedings under Section 33C(1)

34. Lastly, in so far as the arguments of the parties concerning the RLC’s powers to grant MACP/ACP benefits at all is concerned, it is to be noticed that the application which was being dealt with by the RLC who was acting as the Recovery Officer, was under Section 33C(1) of the ID Act, which deals with money due to a Workman. Such an application does not contemplate an adjudication or an enquiry being held as to whether the Workman is entitled to the said benefits or not.

35. Section 33C (1) of the ID Act reads as under:

“33C. Recovery of money due from an employer.-

*(1) Where **any money is due** to a workman from an employer under a settlement **or an award** or under the provisions of Chapter VA or Chapter VB, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:*

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government; within a period not exceeding three months:

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he

may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.”

36. A perusal of the above provision shows that it relates to proceedings which are initiated where “any money is due” to any Workman from an employer under an award or a settlement. Thus, the question as to whether the amount is due or not, is not expected to be gone into in the said proceedings. The interpretation of Section 33C was clarified by a Constitution Bench of the Supreme Court in **Central Bank of India v. P. S. Rajagopalan, AIR 1964 SC 743**, as under:

“It is remarkable that similar words of limitation have been used in s. 33C (1) because s. 33 C (1) deals with cases where any money is due under a settlement or an award or under the provisions of Chapter VA. It is thus clear that claims made under s. 33C (1), by itself can be only claims referable to the settlement, award, or the relevant provisions of Chapter VA. These words of limitations are not to be found in s. 33C (2) and to that extent, the scope of s. 33C (2) is undoubtedly wider than that of s. 33C (1). It is true that even in respect of the larger class. of cases which fail under s. 33C (2), after the determination is made by the Labour Court the execution goes back again to s. 33C (1). That is why s. 33C (2) expressly provides that the amount so determined may be recovered as provided for in sub-section (1).”

37. In **Punjab National Bank Ltd., AIR 1963 SC 487**, the Supreme Court held that:

“It is clear therefore that s. 33-C is a provision in the nature of executing and where the amount to be executed is worked out (for example in an award) or where it may be worked out without any dispute, s. 33-C(1) will apply. But where the amount due to workman is not stated in the award itself and there is a dispute as to its calculation, sub-s. (2) will apply and the workman would be entitled to apply thereunder to have the amount

computed provided he is entitled to a benefit, whether monetary or non-monetary which is capable of being computed in terms of money.”

38. Subsequently, in ***Fabril Gasosa & Ors. v. Labour Commissioner & Ors., 1997 (1) SCALE 544***, the Supreme Court elaborated upon the powers under Section 33C(1) of the ID Act, being restricted to the extent of calculation of a pre-determined amount. The relevant observations of the Court are set out below:

“17. Section 33C is in the nature of execution proceedings designed to recover the dues to the workmen. Vide Section 33C(1) and (2), the legislature has provided a speedy remedy to the workmen to have the benefits of a settlement or award which are due to them and are capable of being computed in terms of money, be recovered through the proceedings under those Sub-sections. The distinction between Sub-section (1) and Sub-section (2) of Section 33C lies mainly in the procedural aspect and not with any substantive rights of workmen as conferred by these two Sub-sections. Sub-section (1) comes into play when on the application of a workman himself or any other person assigned by him in writing in this behalf of his assignee or heirs in case of his death, the appropriate Government is satisfied that the amounts so claimed are due and payable to that workman. On that satisfaction being arrived at, the Government can initiate action under this Sub-section for recovery of the amount provided the amount is a determined one and requires no 'adjudication.' The appropriate Government does not have the power to determine the amount due to any workman under Sub-section (1) and that determination can only be done by the Labour Court under Sub-section (2) or in a reference under Section 10(1) of the Act. Even after the determination is made by the Labour Court under Sub-section (2) the amount so determined by the Labour Court, can be recovered through the summary and

speedy procedure provided by Sub-section (1). Sub-section (1) does not control or affect the ambit and operation of Sub-section (2) which is wider in scope than Sub-section (1). Besides the rights conferred under Section 33C(2) exist in addition to any other mode of recovery which the workman has under the law. An analysis of the scheme of Section 33C(1) and 33C(2) shows that the difference-between the two Sub-sections is quite obvious. While the former Sub-section deals with cases where money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or V-B, sub-section (2) deals with cases where a workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money. Thus, where the amount due to the workmen, flowing from the obligations under a settlement, is predetermined and ascertained or can be arrived at by any arithmetical calculation or simplistic verification and the only inquiry that is required to be made is whether it is due to the workman or not, recourse to the summary proceedings under-section 33C(1) of the Act is not only appropriate but also desirable to prevent harassment to the workmen. Sub-section (1) of Section 33C entitles the workmen to apply to the appropriate Government for issuance of a certificate of recovery for any money due to them under an award or a settlement or under the provisions of Chapter V A and the Government, if satisfied, that a specific sum is due to the workmen, is obliged to issue a certificate for the recovery of the amount due. After the requisite certificate is issued by the Government to the Collector, the Collector is under a statutory duty to recover the amounts due under the certificate issued to him. The procedure is aimed at providing a speedy, cheap and summary manner of recovery of the amount due, which the employer has wrongfully withheld. It, therefore, follows that where money due is on the basis of some amount predetermined like the VDA, the rate of

which stands determined in terms of the settlement, an award or under Chapter V-A or V-B, and the period for which the arrears are claimed is also known, the case would be covered by sub-section (1) as only a calculation of the amount is required to be made.

18. A Constitution Bench of this Court in Kays Construction Co. (P) Ltd. v. State of Uttar Pradesh MANU/SC/0214/1964 : (1965)IILLJ429SC : MANU/SC/0214/1964 : (1965)IILLJ429SC , while considering the scope of Section 6-H(1) and (2) of the U.P. Industrial Disputes Act. 1947, which provisions are in pari materia to Section 33C(1) and (2):

The contrast in the two Sub-sections between ‘money-due’ under the first Sub-section and the necessity of reckoning the benefit in terms of money before the benefit becomes ‘money due’ under the second sub-section shows that mere arithmetical calculations of the amount due are not required to be dealt with under the elaborate procedure of the second sub-section. The appellant no doubt conjured up a number of obstructions in the way of this simple calculation. These objections dealt with the ‘amount due’ and they are being investigated because State Government must first satisfy itself that the amount claimed is in fact due. But the antithesis between ‘money due’ and a ‘benefit which must be computed in terms of money’ still remains, for the inquiry being made is not of the kind contemplated by the second Sub-section but is one for the satisfaction of the State Government under the first Sub-section. It is verification of the claim to money within the first Sub-section and not determination in terms of money of the value of a benefit.

19. The law laid down by the Constitution Bench applies with full force to the facts of the instant case and in view of the established facts and circumstances of this case, recourse to the proceedings under Section 33C(1) of the Act by the union was just and proper.”

39. This position was reiterated in M/s. Hamdard (Wakf) Laboratories v. Deputy Labour Commr. & Ors., AIR 2008 SC 968, which held as under:

“An application under Section 33C(1) of the Industrial Disputes Act, 1947 must be for enforcement of a right. If existence of right, thus, is disputed, the provisions may not be held to have any application.”

40. Therefore, the settled position of law, is that in proceedings under Section 33C (1) of the ID Act, the RLC has limited powers and cannot exercise adjudicatory powers to ascertain whether the benefits claimed were due in the first place or not.

41. The RLC in this case, as the Recovery Officer, was only dealing with the implementation of the award as granted by the ld. Single Judge on 17th April, 2012, and was not adjudicating the question as to whether the Workman was entitled to MACP/ACP benefits.

Conclusions

42. Clearly, therefore, in the background as set out above, the MACP/ACP benefits could not have been directly held to be money due to the Workman, especially in the light of the following factors:

i) The Workman had sought continuity of service and consequential benefits in the statement of claim but not in the writ petition. In any case, the Court had merely granted reinstatement with only 50% of back wages and no other relief;

ii) *The judgment in Deepali Gundu (supra) clearly lays down in paragraph 33.1 and 33.2 that reinstatement with continuity of service and back wages is the normal rule but the Court awarding the back wages can exercise its discretion by considering the length of service of the Workman. By applying this rule, the ld. Single Judge in the order dated 17th April, 2012 had only granted 50% back wages;*

iii) *In Mahabir Prasad (supra), as per the award, the workman was granted reinstatement with 'continuity of service' but without back wages. In Jagdish Chander (supra), the management had assured the Court that it would provide continuity of service and pensionary benefits and then refused the same later. Since 'continuity of service' was granted in these cases in the awards under challenge, the facts are distinguishable from the present case;*

iv) *In any event, as per the Management's policies, various conditions have to be satisfied for grant of MACP/ACP benefits, including a trade test which has to be passed. Thus, these benefits could not have been granted as a matter of right, without the workman having undergone the said test/satisfied the prescribed criteria;*

v) *The RLC could not have gone into such complex issues while passing the impugned orders under Section 33C(1) of the ID Act, as the jurisdiction of the RLC is limited to awarding 'amounts due'. The ACP/MACP benefits would not constitute 'amounts due' in the facts and circumstances of the present case, especially in view of the order of the ld. Single Judge dated 17th April, 2012.*

43. *For the above-mentioned reasons, the impugned recovery certificates and attachment orders are not sustainable and the same are accordingly set aside.*

44. *However, in view of the protracted litigation, litigation expenses of Rs.50,000/- shall be paid by the Management to the Workman, within a period of two weeks, directly into the Workman's bank account. Details of the bank account of the Workman be furnished by the ld. Counsel for the Workman to the ld. Counsel for the Management.*

45. *The writ petition is allowed in these terms. All pending applications are disposed of."*

18. Heard Learned Counsels for the parties at length and perused the record, the matter is being disposed of at the motion hearing stage itself with the consent of the Parties.

19. The undisputed facts of the case reveal that the Workman in question was appointed as a muster roll employee with effect from 17.09.1982, and he was regularized with effect from 12.11.1984. His services were terminated on 15.11.1985, and the Workman raised an industrial dispute which was referred to the CGIT for adjudication.

20. The Appellant Workman alleged non-compliance of Section 25F of the I.D. Act, and also alleged violation of Section 25G and 25H of the I.D. Act. The CGIT did not grant any relief to the Appellant Workman and the Award passed by the CGIT was subjected to judicial scrutiny before this Court.

21. A Writ Petition was preferred by the Workman i.e. W.P.(C.) No. 6796/2001 and was decided on 17.04.2012. The operative paragraphs i.e. Paragraphs 10 and 11 of the said order passed by the Learned Single Judge read as under:

“10. The management had also contested the claim of the workman on the ground that his initial appointment was illegal and therefore, it was justified in invoking Sub-Rule 1 of Rule 5 of CCS (TS) Rules, 1965. As far as that part of the defence of the respondent is concerned, it has failed to establish the same by not adducing any evidence to show that the initial appointment of the petitioner-workman was illegal.

*11. I, therefore, allow this writ petition. The impugned Award of CGIT is set aside. The termination of services of petitioner-workman is held to be in breach of mandatory provisions of Section 25-F of Industrial Disputes Act. Now, it is well settled by the decisions of Hon'ble Supreme Court that once the termination of services of an industrial worker is found to be in violation of the mandatory provisions of Section 25-F of the Industrial Disputes Act, the termination is void ab initio. Reference in this regard can be made to one decision of the Supreme Court in the case of “**Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1, Panipat**”, (2010) 5 SCC 497. Resultantly, the petitioner-workman is ordered to be reinstated in service. As far as the back wages are concerned, considering all the facts and circumstances and particularly the fact that he had worked as a regular employee only for a short period, the respondent no. 1-management shall pay him only 50% of his back wages. The petition stands disposed of accordingly.”*

22. An Appeal was preferred by the Respondent Management against the order passed by the Learned Single Judge however the Appeal was barred by a delay of 164 days. A Division Bench of this Court dismissed the Appeal by an order dated 04.01.2013 passed in LPA 764/2012, and the operative Paragraphs i.e. Paragraphs 3 and 4 of the order passed by the Division Bench read as under:

“3. In our opinion, the above averments made in the application is far from satisfactory requiring condonation of delay. Recently the Apex Court in the judgment in Office of the

Chief Post Master General v. Living Media India Ltd., reported in AIR 2012 SC 1506, after considering the various earlier judgments of the Supreme Court on the issue, ultimately observed as under:

“12. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is

an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.

4. In view of the above decision of the Apex Court, we are not satisfied with the explanation offered. Accordingly, the application seeking condonation of delay is rejected. Consequently, the appeal also stands dismissed.”

23. Thereafter, an SLP being SLP (C) No. 14018/2013 was preferred by the Respondent Management in the matter and the Hon’ble Supreme Court has dismissed the SLP by an order dated 13.11.2014. The said order passed by the Hon’ble Supreme Court is reproduced as under:

“The special leave petition is dismissed.”

24. The Appellant Workman was paid all dues as per the order dated 17.04.2012 passed by this Court in W.P.(C.) No. 6796/2001. However, the Appellant Workman started claiming benefits on account of ACP/MACP, and filed a complaint before the RLC, Central under Section 33 C(1) of the I. D. Act. An order was passed on 26.04.2013 by the RLC, Central directing the Respondent to pay a sum of Rs. 1,95,980/- to the Appellant on account of ACP/MACP dues. A translated copy of the note dated 26.04.2019 passed by the RLC, Central, as placed on record, is reproduced as under:

**“GOVERNMENT OF INDIA
MINISTRY OF LABOUR AND EMPLOYMENT**

*OFFICE OF THE DEPUTY CHIEF COMMISSIONER OF LABOUR
(CENTRAL)*

*FOURTH FLOOR, JEEVANDEEP BUILDING, PARLIAMENT
STREET, NEW DELHI – 110001*

Letter No.:- N.D./17/M.14/2015-8

Dated: 26.04.2019

NOTE

In the present matter worker had joined the job as wireman in M.E.S. on 10/11/1984 but since 15/11/1985 his services were terminated.

He raised this matter at the appropriate forum. Afterwards, Central Industrial Tribunal while deciding the case passed an award on 16/06/2000 according to which the termination of worker was judicial.

The Worker challenged the award given by CGIT before the Hon'ble High Court of Delhi and Hon'ble High Court by its order dated 17/04/2012 cancelled the award dated 16/06/2000 of Industrial Tribunal. According to Hon'ble High Court the termination of worker was unfair and illegal from the very beginning (Void-ab-initio). At this stage the management again challenged judgment dated 17/04/2012 of Hon'ble High Court before the Division Bench where Division Bench quashed the petition filed vide its order dated 04/01/2013. Management again challenged the matter before the Hon'ble Supreme Court where the petition was quashed by the Hon'ble Supreme Court by order dated 03/11/2014 .. It is clear from the above position that the Hon'ble High Court of Delhi's order dated 17/04/2012 has obtained finality in the said case which is enforceable.

According to the applicant because his termination was wrong from the very beginning therefore his reinstatement should be treated in a way that he was never terminated. If reinstatement here is considered to be an uninterrupted (continuous) employment, which is fair and just, then the applicant will get all the facilities which are available to his counterpart at that time.

After issuing the notice in this regard, the management raised an objection that the said applicant cannot be given all the same and equal facilities which are being given to similarly situated workers because in this ACP and M.A.C.P is also included for which the worker is required to pass an examination. A copy of any policy or rule was sought from the management of the compulsion of such qualification or to present any such example from which it would have proved that on the , basis of not passing it any worker had been deprived from A.C.P. and M.A.C.P. The management was also asked to submit the present documentary evidence of any staff immediately junior to the applicant so that the actual position could be ascertained but the management was found unable to provide any such document.

In the above facts and circumstances, it would not be proper in my view to deprive the applicant of his statutory rights without any ground.

Therefore, if approval is: received, then one R.C. for Rs 1,95,980/- will be issued in his favour because out of the amount payable 7,10,046/-, the management has paid Rs.5,14,066/-.

*Sd/-
29.04.2019*

*Signed
(Tej Bahadur)
Regional Commissioner of Labour
(Central)
New Delhi”*

25. Thereafter, a show-cause notice was issued on 29.07.2019, and finally the RLC took steps for recovery of the amount by forwarding the recovery certificate to the SDM, Delhi Cantt. by taking recourse to Section 146 of the DLR Act.

26. The Learned Single Judge after careful consideration of the ACP Scheme has set aside the order passed by the RLC, Central as well as the proceedings before the SDM, Delhi Cantt.

27. This Court has carefully gone through the order passed in W.P.(C.) No. 6796/2001, and the order reveals that the Learned Single Judges as ordered reinstatement in service of the Appellant and has granted 50% of backwages to the Appellant Workman. The order does not reflect that the Learned Single Judge has granted all other consequential benefits also, and inspite of the fact that all other consequential benefits have not been granted to the Workman, the RLC, Central has certainly erred in law and facts in directing payment of amount on account of ACP/MACP.

28. The moot question before this Court is whether the Workman in question is entitled to financial upgradation under the ACP/MACP Scheme automatically on account of reinstatement or the terms and conditions of the ACP/MACP are to be fulfilled for Award of financial upgradation to an Employee in order to avoid stagnation.

29. The Government of India took a policy decision to grant financial upgradation to employees by introducing ACP/MACP in order to ensure that the employees who were stagnating on a particular Pay-Scale are granted financial upgradation in order to avoid stagnation and the grant of MACP was subject to certain terms and conditions. The Office Memorandum dated 19.08.1999, which has been considered by the Learned Single Judge and has been reproduced in Paragraph 32, makes it very clear that two financial upgradationa are granted on completion of certain number of years to service, to the employees who are stagnating on a particular Pay-Scale especially in cases where there were no promotional avenues or the employees were continuing without any promotion on the feeder post. The Office Memorandum dated 09.08.1999 also provided that the grant of

ACP/MACP was not automatic and the requirements of eligibility conditions in the procedure for such grant was also mentioned in the MACP as well as ACP. Various clarifications were issued from time to time and the first clarification was issued on 10.12.2000, and a second clarification was issued on 21.12.2007. The clarifications issued on 21.12.2000 and 10.12.2007 are reproduced as under:

*“Appar Mahanidesh jaya Janshakti
adjutant General Bhakti
Addl. Illegible... Gen. of ..illegible.
Adjutant General of .
Army Headquarter
DHO PO New Delhi – 110011*

21 Dec 2000

CLARIFICATION OF ACP SCHEME

*Following doubts ..illegible.. connection with ..illegible
progressal in (ACP) Scheme clarified as under:-*

<u>Point of Doubt</u>	<u>Clarification</u>
<i>1. In Case of certain ..illegible.. of employees provision of transport is stipulated for promotion of higher grade. Illegible.... Trade tax . are taken by ..illegible in the eligibility of promotion. As such passing of ..illegible... its trade up gradate under ACP Scheme. There are employees who have completed 12/24 year of regular ..illegible as on 09 Aug or an a later..... but they</i>	<i>The issue has been examined in consultation with Min of Defence and Defence (Fin). They have clarified that financial upgradation with be granted from the date of eligibility. If he cleared the trade test in first attempt after 09 Aug 99. But if he fail in his first attempt and clear it subsequently, the effective date for grant of</i>

have passed the trade test later the due date for ..illegible.. of ACP as and which trade test is conducted by the authority. What would be the affective date for grade of financial upgradation an employee illegible.. regulate trade test subsequently. 2. Grant of financial upgradation under ACP scheme to the employees in HS ..illegible are in the payscale Rs. 4000-6000. 3. validity of undertaking taken from the employees an grant of second financial upgradation to accept the regular promotion subsequently, if not accepted, ACP will be withdrawn.	financial upgradation would be from the date of trade test. For example, if an employee complete 24 years service in Dec 99 but in given trade test in Apr 2000, he will get his first upgradation from 09 Aug 99 and second upgradation from Dec 99. The DOP&T has clarified that the grade of master Craftsman may not be treated as part of hierarchy for the purpose of grant of financial upgradation under the ACP Scheme. Consequent to DOP&T clarification conveyed under MOD ID No. 11(9)/99/D(Giv-I) dated 11 Dec 2000, such undertaking obtained, if any, he cancelled.
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(SM Sharma)
DAAG/NP & Civ(a)
For Adjutant General)"

"Dte Gen of Personnel/CSCC
Engineer-in-Chief's Branch
Army Headquarters
Kashmir House, New Delhi – 110011
85610/47/ACP/IND/Scheme/CSCC

10 Dec 2007

*CE, Southern Command
CE, Eastern Command
CE, Western Command
CE, Central Command
CE, Norther Command
CE, South Wester Command*

**ACP SCHEME CLARIFICATION ON CONDITION 4 OF
ANNEXURE OF DOPT OM DT 09 AUG 1999**

- 1. The issue pertains applicability of condition 4 of annexure-I of Govt. of India department papers and trg OM No 35034/1/97-estt (D) dated 09 Aug 1999, which stipulates that “if the 1st upgradation gets postponed on account passing trade test, this would have consequential effect on 2nd upgradation which would also get deffered accordingly.*
 - 2. All India Defence Employees Federation has represented that the only criteria for granting ACP regarding eligibility service should be 24 years of regular service counted from the Date of entry into service. According to them as ..illegible 4 of DoPT OM NO. 35014/1/2003-Estt(D) dt 29 Jun 04, while a ...illegible.... Has to be eligible in all aspect to hold higher post, insofar as ..illegible.. of “eligibility service” is concerned, he should have complete prescribed 24 years of regular service.*
 - 3. MoD was request to clarify whether the first upgradation gets postponed on account on passing the Trade Test, the 2nd ACP can be given after completion of years of service or after 12 years of regular service from the date of joining 1st ACP.*
 - 4. MoD has clarified 1st upgradation under ACP is delayed due to not fulfilling the requirement of promotion, the 2nd financial upgradation would be given only a completion of 12 years after grant of 1st”*
30. The aforesaid clarifications makes it very clear that an Employee is entitled for grant of ACP/MACP benefits subject to his clearing/ qualifying the trade trade test. The clarification makes it very clear that the conditions

required for promotion to the next higher grade are also required to be fulfilled for grant of upgradation after completion of 12/24 years of service.

31. In the present case, it is an undisputed fact that the Appellant Employee never qualified the trade test and wants the ACP/MACP Scheme to be implemented in his case without fulfilling the eligibility criteria prescribed under the Scheme dated 09.08.1999 read with clarifications dated 21.12.2000 and 10.12.2007, and therefore, in the considered opinion of this Court, the Learned Single Judge was justified in setting aside the order passed by the RLC, Central and the proceedings pending before the SDM, Delhi Cantt.

32. The Division Bench of this Court in W.P.(C.) No. 8056/2015 titled ***Rajiv Sinha & Ors Vs. Ministry of Personnel, Public Grievances & Pensions & Ors*** while dealing with a matter regarding grant of higher pay on non-functional basis in view of Office Memorandum dated 24.04.2009 issued by Ministry of Personnel, Public Grievances and Pensions has dealt with a similar controversy.

33. In the aforesaid case also the IAS Officers were granted higher Pay-Scale without fulfilling the terms and conditions of the Office Memorandum and in those circumstances, this Court in the case of ***Rajiv Sinha*** (Supra) in Paragraph 9 to 12 has held as under:

“9. It is trite law that an employee cannot be granted financial upgradation without fulfilling the requisite qualification prescribed by the executive policy. In Bhakra Beas Management Board vs. Krishan Kumar Vij & Anr., (2010) 8 SCC 701, the Hon’ble Supreme Court considered the following issue: -

“2. Precisely, we are required to consider whether in light of the order/circular issued by the Appellant Bhakra Beas Management Board (hereinafter shall be called as “Board”), Respondent 1 employee would be entitled to benefit of higher scale of pay/upgradation/stepping up of salary sans prerequisite qualification for the grant of the same.”

10. In the facts and circumstances of the said case, the Hon’ble Supreme Court proceeded to hold the following:-

“22. We have already mentioned hereinabove with regard to Clause 2 of the 1990 Order read with Regulation 9 which restricts the benefit only to directly recruited Assistant Engineers/Assistant Executive Engineers, meaning thereby that one must possess the requisite qualification as prescribed under the Regulations, then only the benefit would accrue to the employee, not otherwise. The Note appended thereto clearly stipulates that even those employees who were promoted under Regulation 7(a)(ii) read with Regulation 10(4) shall be deemed to have been appointed by direct recruitment. This legal fiction is limited. It is applicable only to those employees who have been promoted in conformity with the provisions contained in Clause 4. Thus, the employees who had passed both Parts (A) and (B) of the AMIE examination and were promoted against 9% posts reserved for that class were fictionally treated as direct recruits. Thus, it clearly stipulates that only those Assistant Engineers who were either directly recruited or had acquired the requisite qualifications prescribed for direct recruitment were chosen to be granted higher scale if they had been promoted against the post falling within the quota of 9% of the cadre strength of the said post.

23. The 1990 Order contemplates that it is to be followed as per regulation which provides that only such persons as have been promoted under Regulation 7(a)(ii) read with Regulation 10(4) shall be treated as direct

recruits. In other words, it does not apply to the promotees irrespective of their academic qualifications nor can they be treated on a par with the direct recruits. There was a purpose for treating them so, otherwise, it would have the effect of violating the constitutional mandate contained in Articles 14 and 16 of the Constitution of India, on the premise that unequals have been treated as equals. It is with that intention, to avoid criticism and future litigation that such persons who possessed qualifications for direct recruitment and could be promoted against the posts falling vacant, would become entitled to claim the benefit. Since Respondent 1 did not fall in this category, obviously, he was not entitled to the higher scale.

24. Thus, there appears to be no illegality committed by the Board in rejecting Respondent 1's representation. So, in our considered opinion, the High Court has clearly erred in setting aside and quashing the same.

25. The critical examination of the impugned judgment passed by the Division Bench of the High Court completely defeats primary purpose of the 1990 Order and provisions applicable to the employees of the Board. No doubt, it is true that the 1990 Order was issued only with an intention to remove the stagnation but this would not give blanket or absolute right to any employee to be entitled to higher pay scale even if he does not fulfil prerequisite qualifications for holding the higher post. In other words, if he possesses the required qualifications but is unable to get the higher post on account of non-availability of such post, then only he can be categorised as suffering from stagnation as per Order of 23-4-1990.

26. Obviously, an employee who does not fulfil the qualification as per Regulation 10(4) for the higher post would be ineligible for promotion and/or higher pay scale. In that eventuality, such an employee cannot complain of stagnation. Moreover, even while adopting the 1990 Order, it was made clear by the Board vide its

Order dated 26-6-1992 that the time-bound promotional/devised promotional scales after 9/16 years' service are admissible only in respect of the posts in which the initial induction is through direct recruitment.

x x x x x x x

31. If the interpretation of the High Court to the 1990 Order is to be implemented, then it would lead to unsustainable consequences. It would then mean that every Assistant Engineer irrespective of his conduct, qualifications, performance or behaviour would become entitled to the higher scale on completion of particular length of service. If that be so, then even those employees with poor service record and doubtful integrity would also become entitled to claim higher scale merely because they had completed a particular length of service. If such an interpretation is to be given to the 1990 Order, then it would not only be improper but would also be against public policy and interest of the Board. It is too well settled that a statute or any enacting provision must be so construed as to make it effective and operative. Any such construction which reduces the statute to a futility has to be avoided.

x x x x x x x

39. At the cost of repetition, we may reiterate that the effect of the 1990 Order read with the Regulations would be that only those employees who fulfilled the prerequisite qualification for further promotion along with certain length of service as required would only be entitled to the benefit as per the 1990 Order. The other Assistant Engineers, even though they had completed the requisite length of service would not be entitled to claim the benefit, unless they had fulfilled the basic qualifications and minimum experience as required."

11. Thereafter, in Punjab State Power Corporation Limited and Anr. vs. Bal Krishan, (2022) 1 SCC 322, the Hon'ble Supreme

Court reiterated its stance in Bhakra Beas (Supra). The operative Paragraphs of the Judgment read as under:

“19. This Court in Bhakra Beas Management Board case [Bhakra Beas Management Board v. Krishan Kumar Vij, (2010) 8 SCC 701 : (2010) 2 SCC (L&S) 694], after considering the aims and objects of the office order dated 23-4- 1990 issued by the PSEB, and also the entire scheme of time bound benefit of promotional/devised promotional scale as envisaged in the said office order, observed as under : (Bhakra Beas Management Board case [Bhakra Beas Management Board v. Krishan Kumar Vij, (2010) 8 SCC 701 : (2010) 2 SCC (L&S) 694] , SCC pp. 710-12, paras 25 & 31)

“25. The critical examination of the impugned judgment [Krishan Kumar Vij v. State of Punjab, CWP No. 19306 of 2003, order dated 6-12-2004 (P&H)] passed by the Division Bench of the High Court completely defeats primary purpose of the 1990 Order and provisions applicable to the employees of the Board. No doubt, it is true that the 1990 Order was issued only with an intention to remove the stagnation but this would not give blanket or absolute right to any employee to be entitled to higher pay scale even if he does not fulfil prerequisite qualifications for holding the higher post. In other words, if he possesses the required qualifications but is unable to get the higher post on account of non-availability of such post, then only he can be categorised as suffering from stagnation as per Order of 23-4-1990.

31. If the interpretation of the High Court to the 1990 Order is to be implemented, then it would lead to unsustainable consequences. It would then mean that every Assistant Engineer irrespective of his conduct, qualifications, performance or

behaviour would become entitled to the higher scale on completion of particular length of service. If that be so, then even those employees with poor service record and doubtful integrity would also become entitled to claim higher scale merely because they had completed a particular length of service. If such an interpretation is to be given to the 1990 Order, then it would not only be improper but would also be against public policy and interest of the Board. It is too well settled that a statute or any enacting provision must be so construed as to make it effective and operative. Any such construction which reduces the statute to a futility has to be avoided.”

20. *In view of the above, it was made clear by this Court in Bhakra Beas Management Board case [Bhakra Beas Management Board v. Krishan Kumar Vij, (2010) 8 SCC 701 : (2010) 2 SCC (L&S) 694] that an employee could be said to be suffering from stagnation as per the office order dated 23-4- 1990 only if he possessed the requisite qualification for the next higher post and was unable to get the higher post on account of non-availability of such post.”*

12. *The executive instructions (Office Memorandum dated 24.04.2009) issued by Respondent No. 1 makes it very clear that an employee shall be entitled for financial upgradation subject to fulfillment of all prescribed eligibility criteria and promotional norms including bench-mark upgradation to a particular Grade Pay, and it also provides for screening. In terms of the OM dated 24.04.2009, the Petitioners cannot be granted upgradation in the manner desired by them. Since the manner in which the Petitioners have been granted upgradation on a non-functional basis is correct, no basis for interference with the Impugned Order is made out. The petition is, accordingly, dismissed.”*

34. In light of the aforesaid judgment passed by a Division Bench of this Court and also keeping in view the ACP/MACP Scheme, this Court is of the considered opinion that an employee cannot be granted benefit under the ACP/MACP Scheme on completion of 12/24 years in case he does not fulfill the conditions mentioned therein regarding the passing in the trade test, by the said employee.

35. The Appellant Employee has not cleared the trade test, and, therefore, by no stretch of imagination, is he entitled for grant of financial upgradation under the ACP/MACP Scheme merely because he has been directed to be reinstated a service with 50% backwages.

36. This Court is of the considered opinion that the Learned Single Judge was justified in allowing the writ Petition preferred by the Garrison Engineer, Military Engineer Service.

37. Learned Counsel for the Appellant has placed heavy reliance upon a judgment dated 22.08.2022 delivered by the Hon'ble Supreme Court in the case of *Union of India and Others Vs. Ex. HC/GD Virender Singh*, 2022 SCC OnLine SC 1058, and his contention is that in spite of the fact that the Appellant has not cleared the trade test, he is entitled for the benefit under the MACP Scheme. Paragraphs 2, 3 and 14 of the said judgment read as under:

“2. These appeals by way of special leave raise three issues, all of which are connected and relate to the Modified Assured Career Progression Scheme¹, namely:

(a) Whether the MACP Scheme is applicable and to be implemented with effect from 1st January 2006, the date from

which the Central Civil Service (Revised Pay) Rules, 2008 were enforced, or in terms of O.M. dated 19th May 2009 with effect from 1st September 2009?

(b) Whether under the MACP Scheme the respondents are entitled to financial upgradation equivalent to the pay scale/grade pay of the next promotional post in the hierarchy, or the immediate next grade pay in the hierarchy of the pay bands as stated in Section 1, Part A of the First Schedule to the Central Civil Services (Revised Pay) Rules, 2008?

(c) Whether the respondents, who belong to the Central Armed Police Forces, are entitled to grant of financial upgradation under the MACP Scheme, if for administrative reasons they were unable to fulfil the pre-proportional norms?

3. The second question is covered by a three Judge Bench decision of this Court in Union of India v. M.V. Mohanan Nair², which judgment explicates the similarities and the difference between the Assured Career Progression Scheme³, the erstwhile scheme which was replaced by the MACP Scheme. In a nutshell, it can be stated that the MACP Scheme, like the ACP Scheme, is an incentive scheme devised with the object of ensuring that the employees who have stagnated for lack of adequate promotional avenues are given benefit in the form of financial upgradation. The financial upgradation is personal, does not amount to regular or actual functional promotion, and does not require creation of a new post. It has no relevance to the seniority position and principles of reservation are not applicable. Financial upgradation is granted to only those employees who have not received actual or functional promotion even after completion of the requisite service period, though otherwise, they fulfil the prescribed conditions for promotion⁴. Having said so, the ACP Scheme and the MACP Scheme differ significantly. Under the ACP Scheme, a government servant is entitled to financial upgradation on completion of 12 and 24 years of her/his regular service, to the pay scale of the next promotional post in the hierarchy. Under the MACP Scheme, an employee is entitled to three financial upgradations on completion of 10, 20 and 30 years of regular

service to the next higher grade pay in the hierarchy of the pay bands and grade pay as given in Section 1, Part A of the First Schedule of the Central Civil Services (Revised Pay) Rules, 2008.

Xxxxxxx

14. 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 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.”

38. In Paragraph 3 of the aforesaid judgment, the Hon’ble Supreme Court has observed that the financial upgradation is granted to only those employees who have not received actual or functional promotion even after completion of the requisite service period though, otherwise, they have fulfilled the prescribed conditions for promotion. The Hon’ble Supreme Court in Paragraph 14 of the aforesaid judgment has allowed the benefit of financial upgradation even though the norms laid down for promotion were not fulfilled, only on the ground that the Central Armed Forces Personnel who were before the Hon’ble Supreme Court for administrative or other reasons could not undergo the pre-promotional course.

39. In the present case, the reason for non-grant of financial upgradation, if any, cannot be attributed to the Employer and the Employee at no point of time, even after he was reinstated back in service has cleared the trade test, and, therefore, the aforesaid judgment is distinguishable on facts.

40. Learned Counsel for the Appellant has also placed heavy reliance upon a judgment dated 14.10.2022 delivered by the Division Bench of the Rajasthan High Court in D.B. Civil Writ Petition No. 14070/2022 titled ***Union of India and Others Vs. Ram Chandra.***

41. In the aforesaid case, financial upgradation was granted without passing of the trade test and later on the same was withdrawn. In the aforesaid case, even other identically placed persons who could not clear the trade test were granted upgradation under the ACP/MACP Scheme.

42. Paragraph 7 of the aforesaid judgment delivered by the Division Bench of the Rajasthan High Court is reproduced as under:

“7. Upon consideration of the arguments advanced by counsel for the Union of India, it appears that the same are misconceived, contrary to facts and the settled position of law and the order dated 09.04.2021 is required to be upheld for the following reasons:-

(i) There was no fault of the applicants when they were promoted as FMG-HS in the year 2003.

(ii) It is undisputed that the respondents have been discriminated against, as other persons have been granted promotion without passing the trade test and the said fact has not been denied by the petitioners. The Tribunal has placed strong reliance on the said fact in the impugned order.

(iii) *It was also observed by the Tribunal that the respondents were low-paid employees and in the representation dated 24.09.2012, they asked for the 2nd ACP/MACP, which they are entitled to get if no promotion is given.*

(iv) *The petitioners have also admitted that they are not insisting on the recovery of excess payment given during the period in which the respondents were promoted to the FGM-HS post.”*

43. In light of the aforesaid, as the Employees therein were discriminated against other persons who have been granted promotion without passing the trade test, the High Court has passed the order in favour of Employees therein, and therefore, the judgment is again distinguishable on facts and no relief can be granted on the basis of the aforesaid judgment.

44. The fact remains that the Employee in question has not cleared the trade test and, therefore, the condition laid down under the ACP/MACP Scheme are not fulfilled, therefore, the question of holding him entitled under the ACP/MACP Scheme for grant of financial upgradation does not arise. This Court does not find any reason to interfere with the order passed by the Learned Single Judge.

45. The Learned Single Judge in the impugned judgment has also dealt with the scope of the proceedings under Section 33 (C) (1) of the I. D. Act. Section 33 (C) (1) of the I.D. Act reads as under:

“Section 33 (C) (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery,

make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.”

46. The aforesaid statutory provision of law makes it very clear that where any money is due to a Workman from an Employer under a settlement or an Award, the Workman can claim it by filing an Application under Section 33 (C) (1) of the I. D. ACT.

47. In the present case, the Award of financial upgradation under the ACP/MACP Scheme was at no point of time decided in favour of the Workman and the Workman was certainly not entitled for grant of financial upgradation as he did not clear the trade test which is a pre-requisite for grant of such upgradation. It is unfortunate that the RLC, Central had adjudicated a dispute by holding that the Workman is entitled for MACP.

48. The Application under Section 33 (C) (2) of the I. D. Act is restricted to the extent of calculation of pre-determined amount/ any money due to any Workman from the Employer under an Award. (See: ***Central Bank of India v. P. S. Rajagopalan***, AIR 1964 SC 743, ***Punjab National Bank Ltd. v. K.L.***

Kharbanda, AIR 1963 SC 487 and *M/s. Hamdard (Wakf) Laboratories v. Deputy Labour Commr. & Ors.*, AIR 2008 SC 968).

49. The RLC, Central in the present case has transgressed his jurisdiction by adjudicating a dispute relating to grant of ACP/MACP, and, therefore, the order passed by the RLC, Central is certainly contrary to the statutory provisions as contained under Section 33 (C) (1) of the I. D. Act. Resultantly, this Court is of the firm opinion that the order passed by the Learned Single Judge does not warrant any interference.

50. With the aforesaid, the present LPA stands disposed of.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

MAY 15, 2023

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