



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

% Judgment reserved on: 28th August, 2023
Judgment delivered on: 5th September, 2023

+ W.P.(C) 2280/2019

JAI PAL Petitioner

versus

UNION OF INDIA AND ORS. Respondents

Advocates who appeared in this case:

For the petitioners: Mr. Ankur Chhibber with Mr. Nikunj Arora, Advocates.

For the Respondent: Mr. Vijay Joshi, Sr. Panel Counsel with Mr. Sunil Kumar, Head Constable.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. Petitioner seeks quashing of order dated 14.11.2018 whereby, he has been declared “not yet fit” for the purposes of grant of 3rd MACP (Modified Assured Career Progression). He also seeks benefit of 3rd MACP to him w.e.f. 12.10.2011.

2. Petitioner joined as Constable (GD) in Central Industrial Security Force (CISF) under sports quota on 19.03.1981. He got promoted to the rank of Head Constable on 10.10.1997.



3. A departmental inquiry was initiated against him in the year 2001 wherein he was found guilty and was dismissed from the services on 01.05.2002.

4. Such dismissal was challenged by him and the Coordinate Bench of this Court vide order dated 03.06.2011 passed in W.P.(C) 7901/2003 quashed the aforesaid dismissal order.

5. Feeling aggrieved, the respondents preferred SLP before the Supreme Court. Leave was granted and such SLP (registered as Civil Appeal No. 2428/2014) was disposed of by the Supreme Court on 17.02.2014 directing as under:-

- “(i) *The appellants shall reinstate the respondent in service within ten days from today.*
- (ii) *The respondent shall not be entitled to back wages at all.*
- (iii) *The respondent shall, however, be entitled to continuity of service and all other benefits arising from reinstatement except back wages.”*

6. Resultantly, the petitioner was reinstated in the service and joined back on 28.02.2014.

7. It is not in dispute that consequent to his reinstatement, the petitioner was granted 2nd ACP from 01.01.2007, with monetary benefits w.e.f. 01.03.2014 i.e., after the date of his reinstatement. It is also not in dispute that he also got notionally promoted as ASI from 20.10.2010, with actual charge assumption w.e.f. 02.01.2015.

8. Thus, after his reinstatement, he had been granted notional promotion as ASI and had also been granted the benefit of 2nd ACP.



9. The present controversy relates to non-grant of 3rd MACP.

10. Surprisingly, various orders were passed by respondents granting 3rd MACP to the petitioner and then modifying and even recalling the same. The following table shall depict the sequence of all such orders.

Date of order	Grant/withdrawal of MACP	Benefit With Effect From	Remarks, if any
08.09.2015	Granted	31.12.2012	-
08.02.2016	Withdrawn	-	Not yet fit for 3 rd MACP.
29.03.2017	Granted	01.01.2016	Not fit for years 2013, 2014 and 2015.
14.11.2018	Withdrawn (order dated 29.03.2017 was also cancelled)	-	Not yet fit as did not have three 'very good' APARs.

11. Things did not stop there. Even, during the pendency of the present writ petition, the matter was once again reviewed by the office of the Commandant, CISF, and the aforesaid last order dated 14.11.2018 was also withdrawn on 08.06.2019 and the order dated 29.03.2017 granting 3rd MACP w.e.f. 01.01.2016 was restored. Reference, in this regard, be made to the counter affidavit of the respondents.

12. Meaning thereby, the petitioner, as on date, has already been given 3rd MACP albeit w.e.f. 01.01.2016



13. As noticed already, the contention of the petitioner is that the Department should have given him 3rd MACP w.e.f. 01.01.2011.

14. It has been argued by the petitioner that the Department was unjustified in assuming that he could not have been given MACP in the year 2011 as he had not obtained three 'very good' Annual Performance Assessment Report (APAR) during the last five years.

15. The contention of the petitioner is two-fold here.

16. Firstly, the Department did not consider the fact that for the relevant period, the benchmark was three 'good' APARs and not three 'very good' APARs. It is asserted that the benchmark for financial upgradation under MACP scheme was modified as per the recommendations of 7th CPC, which were accepted by the Government. Earlier the benchmark of 'good' grading was sufficient for financial upgradation but w.e.f. 25.07.2016, the prescribed benchmark was raised from "good" to "very good". It is thus, claimed that for grant of 3rd MACP to the petitioner in the year 2011, the department could not have denied him the benefit for not meeting the benchmark of 'very good' which was applicable w.e.f. 25.07.2016 only. Secondly, according to him, the respondent had already given him other notional benefits, including promotion, and thus, there was no reason to have denied him the benefit of 3rd MACP. It is argued that he was in no position to work and perform between 01.05.2002 till his reinstatement on 20.02.2014 as he had been illegally dismissed by the respondents. Thus, irrespective of APARs, which were though



good for the available period, he should have been given notional benefit of 3rd MACP as well as he had been reinstated with all consequential benefits and continuity of service.

17. We do find merit in the aforesaid standpoint of the petitioner.

18. Admittedly, even as per respondents, the petitioner had become eligible for grant of 3rd MACP on completion of 30 years of service in the year 2011. At that time, as per the prevalent criterion, he was not required to show three 'very good' APARs during the last five years. Thus, the respondents had apparently erred in applying wrong yardstick. It is also not in dispute that for the earlier period when he was in service, he got APAR grading as 'good', and even for the subsequent period, after his reinstatement, his APAR, as per the dossier produced in the Court depicted that his performance had been graded as 'good'.

19. The petitioner joined the service on 19.03.1981. Thus, he completed 30 years of service on 18.03.2011 and became entitled to 3rd MACP. It is not in dispute that when he was granted 2nd ACP, there was a deferment of 1 year 9 months and 11 days and in such a situation, the 3rd MACP is also required to be proportionately deferred.

20. Apparently, such period of deferment was taken into consideration and, therefore, only, he was initially granted 3rd MACP w.e.f. 31.12.2012 vide order dated 08.09.2015. Such order also records that though he was entitled to 3rd MACP w.e.f. 31.12.2012, the financial benefits would accrue from the date of his reinstatement.



Such first order seems to have been passed after proper appreciation of facts. However, for totally inexplicable reasons, it was withdrawn.

21. The petitioner herein has though sought 3rd MACP w.e.f. 01.01.2011 but has not made clear the basis thereof. He joined service of the respondents on 19.03.1981 and, in the present factual context, he cannot get 3rd MACP before completion of 30 years of service. Moreover, the period of deferment is also required to be taken into consideration.

22. In view of the aforesaid, it is quite apparent that the petitioner is entitled to grant of 3rd MACP w.e.f. 31.12.2012, though the financial benefits would flow only w.e.f. 01.03.2014 as he was directed to be reinstated without any back wages.

23. We thus order accordingly and direct the respondents to issue necessary order and clear the dues within six weeks from today.

24. Writ petition stands disposed of in aforesaid terms.

25. No order as to costs.

MANOJ JAIN, J

SANJEEV SACHDEVA, J

SEPTEMBER 05, 2023/sw