



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

% *Date of decision: October 12, 2023*

+ W.P.(C) 13497/2023, CAV 539/2023, CM APPLs. 53291/2023 & 53292/2023

(60) GOVT OF NCT OF DELHI AND ORS

..... Petitioners

Through: Mr. Gaurav Dhingra, Adv.

versus

GUDDU SINGH RAWAT

..... Respondent

Through: Mr. Asish Nischal, Adv. with
Mr. Arun Nischal and Ms. Rinku
Shah, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 53291/2023

Allowed, subject to just exceptions.

Application disposed of.

CAV 539/2023

Mr. Nischal appears for the caveator.

The caveat is discharged.

W.P.(C) 13497/2023 & CM APPL. 53292/2023

1. This petition has been filed challenging the order dated January 05, 2023 passed by the Central Administrative Tribunal (hereinafter referred to as 'Tribunal'), whereby the Tribunal has allowed the O.A. filed by the



respondent herein by directing as under:-

“14. While allowing the O.A., a direction is issued to the competent authority amongst the respondents to pass an appropriate order of stepping up/re-fixation of the pay of the applicant to ensure that the same is at par with his junior and the anomaly so created stands redressed. The said direction shall be complied with within a period of six weeks' from the date of receipt of a certified copy of this order.

15. Needless to say that pursuant to such stepping up/ re-fixation, the applicant shall be entitled to all the consequential benefits which would accrue.”

2. The case of the respondent before the Tribunal was that the person, junior to him in the cadre of Laboratory Assistant in the petitioners organisation was drawing higher pay and allowances and as such his pay be stepped up qua his junior. The case of the petitioners before the Tribunal was that they have acted in accordance with the guidelines of the DoP&T. The attention of the Tribunal is drawn to paragraph 1 of the counter reply in which the relevant instructions of DoP&T were quoted and for this purpose, we quote paragraph 5 of the impugned order as under:-

“5. Learned counsel for the respondents submits that the respondents have acted strictly in accordance with the guidelines of the DoP&T governing the subject. He specifically draws attention to para 1 of his counter reply in which the relevant instructions of DoP&T has been quoted. For the sake of clarity, the same is reproduced below:

1. That as per DoP&T OM dt. 19.5.2009, on the subject of MACP, it is clearly provided on Page No 07 at point No. 20 that, "20. Financial up-gradation under the MACPS shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employees on the ground that the junior employee in the grade has got higher pay/grade pay under the MACPS."



It is further clarified at point no.10 that, "10. No stepping up of pay in the pay band or grade pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACP Scheme." (Annexure A-1.)

Hence, it is submitted that whereas the applicant joined on 10.09.1992 and his junior joined on 02.07.1993. The applicant, after completion of 20 years of service was considered for 2nd MACP in Grade Pay Rs 20001- wef 10.9.2012, however both, the applicant and his junior were promoted as Lab Asstt. in PB-1 (5200-20200) with GP of Rs.2400/- on 01.03.2013, while the junior, after completion of 20 years of service was granted 2nd MACP w.e.f 02.07.2013 (after his promotion to the post of Lab Assistant) in GP2800/-(5200-20200). Hence, as per the norms laid down in the MACP guidelines, the action on the part of the respondents is justified and not illegal.

It is also submitted that the applicant's reliance on the judgment of Hon'ble Tribunal as upheld by Hon'ble High Court in the matter of Vandana Panwar is not correct, as the same was a matter regarding claim for increment on the day of her joining as direct recruitment as PGT not on MACPs.

The applicant's reliance on the judgment in Tejbir's case is also misplaced, since the same dealt with the case of ACP and not MACPS, and whereas, under ACP scheme, upgradation was granted in the next higher pay scale as per hierarchy of line of promotion, whereas, under MACP upgradation is granted only upto next higher grade pay as prescribed.

2. That identical matter has already been taken up with the Services Department/ Finance Department, and further with DOPT in compliance of order dated 28/01/2019 passed by this Hon'ble Tribunal in O.A. No.264/2019 titled Sushil Kumar-II Vs. Govt. of NCT and it has been decided that such matter will be



finalized at the earliest as possible in consultation with these departments. Copy of order dated 02.05.2019 passed in similar case is annexed herein. (Annexure A-2)."

3. The reliance was also placed on the judgment of the Supreme Court in Civil Appeal 2016/2020. In substance, the stand of the petitioners before the Tribunal was in view of the DoP&T instructions, even if a junior is drawing a higher pay, the pay of the senior need not be stepped up.

4. Mr. Gaurav Dhingra, learned counsel for the petitioner has drawn our attention to the MACP Scheme issued on May 19, 2009, more specifically, paragraph 10, which reads as under:-

"10. No stepping up of pay in the pay band or grade pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACP Scheme."

5. That apart, he has also drawn our attention to paragraph 20 of the Annexure A/1 of the scheme which reads as under:-

"20. Financial upgradation under the MACPS shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employees on the ground that the junior employee in the grade has got higher pay/grade pay under the MACPS."

6. He has also drawn our attention to paragraph 28 under the heading of 'Illustrations', more specifically (iii)(B), which reads as under, to contend that under the MACP Scheme, even if a junior is drawing a higher pay, the pay of the senior need not be stepped up as the benefit under the MACP Scheme is personal to the officer. He also submits, it is not the case of the respondent that his seniority has been affected.



“If a Government servant (LDC) in PB-1 in the Grade Pay of Rs.1900 is granted 1st financial upgradation under the MACPS on completion of 10 years of service in the PB-1 in the Grade Pay of Rs.2000 and 5 years later he gets 1st regular promotion (UDC) in PB-1 in the Grade Pay of Rs.2400, the 2nd financial upgradation under MACPS (in the next Grade Pay w.r.t. Grade Pay held by Government servant) will be granted on completion of 20 years of service in PB-1 in the Grade Pay of Rs.2800. On completion of 30 years of service, he will get 3rd ACP in the Grade Pay of Rs. 4200. However, if two promotions are earned before completion of 20 years, only 3rd financial upgradation would be admissible on completion of 10 years of service in Grade Pay from the date 2nd promotion or at 30th year of service, whichever is earlier.”

7. On the other hand, Mr. Nishchal’s submission is primarily based on the judgment of the Supreme Court in the case of ***Union of India & Ors. v. C. R. Madhava Murthy & Ors., Civil Appeal Nos.2087-2088/2022, decided on April 06, 2022.***

8. Having heard the learned counsel for the parties, though, Mr. Dhingra has relied upon the MACP Scheme, the relevant portions of which have already been reproduced above, we are of the view that the judgment of the Supreme Court in ***C. R. Madhava Murthy (supra)***, paragraph 6, thereof which reads as under, covers the issue in favour of the respondent:-

“6. Therefore, it was a case where a junior was drawing more pay on account of upgradation under the ACP Scheme and there was an anomaly and therefore, the pay of senior was required to be stepped up. Hence, in the facts and circumstances of the case, the High Court has rightly directed the Appellants herein to step up the pay of the original writ Petitioners keeping in view of pay scale which has been granted to the juniors from the date they have started drawing lesser pay than their juniors. We are in



*complete agreement with the view taken by the High Court.
No interference of this Court is called for.”*

9. It is clear that if a junior is drawing more pay on account of upgradation under the ACP Scheme (in this case MACP Scheme), there being an anomaly, the pay of the senior is required to be stepped up.

10. In view of settled position of law, we are of the view that the Tribunal is justified in allowing the O.A. in the manner it did in paragraph 9 by relying upon the judgment of the Supreme Court in ***C.R. Madhava Murthy & Ors. (supra)***.

11. We do not see any merit in the petition, the same is dismissed.

12. We have been told that a contempt petition has been filed by the respondent and the same is coming up for hearing on October 16, 2023. As we have dismissed the petition, we grant two months time to the petitioners to comply with the impugned order.

13. At this stage, Mr. Nischal states, in view of the order passed by this Court, he shall, on October 16, 2023, take adjournment to a date beyond two months time granted by this Court for compliance.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

OCTOBER 12, 2023/ds