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W.P.No.30906 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.30906 of 2014

M.Anandan

... 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,
CGO Complex, Lodhi Road,
New Delhi.
- 3.The Inspector General,
Central Industrial Security Force,
Southern Sector, Head Quarters,
Near War Memorial, Chennai-9.
- 4.The Deputy Inspector General,
Central Industrial Security Force,
South Zone, Head Quarters-D Wing,
Rajaji Bhawan, Besant Nagar,
Chennai-90.
- 5.The Commandant,
Central Industrial Security Force Unit,
Visakhapattinam Steel Plant,
Visakhapattinam-31,
Andhra Pradesh.



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6. The Assistant Commandant /Fire,
Central Industrial Security Force Unit,
Visakhapattinam Steel Plant,
Visakhapattinam-31,
Andhra Pradesh.

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records relating to the order passed by the 4th respondent dated 06.01.2010 in his order No. V-11015/43/2009/ MA/L&R(SZ)/31 confirming the order of the 5th respondent dated 22.07.2009 in his appellate order No. V-15015/Minor/Disc/ Appeal/09/3572 confirming the order of the 6th respondent dated 29.05.2009 in his final order No. V-15015/UR-37/FW(4)/ MAN/2009/562 and quash the same and to direct the respondents and to pay all benefits and financial up-gradation and revision of Pension from October 2013 and continue to pay to the petitioner.

For Petitioner : M/s.A.S.Mujibur Rahman

For Respondents :
(for R1 to R6) : M/s.K.S.Jeyaganeshan



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ORDER

The above writ petition has been filed to call for the records relating to the order passed by the 4th respondent dated 06.01.2010 in his order No.V-11015/43/2009/ MA/L&R(SZ)/31 confirming the order of the 5th respondent dated 22.07.2009 in his appellate order No.V-15015/Minor/Disc/ Appeal/09/3572 confirming the order of the 6th respondent dated 29.05.2009 in his final order No. V-15015/UR-37/FW(4)/ MAN/2009/562 and quash the same and to direct the respondents to pay all benefits and financial up-gradation and revision of Pension from October 2013 and continue to pay the same to the petitioner.

2. The facts are briefly set out herein below:-

2.1. The petitioner had joined as a Constable on 19.07.1993 in the Central Industrial Security Force (CISF). On 02.02.1998 he was promoted as a Head Constable Fire Wing and after serving in the respondent force all over India ultimately he was transferred to the CISF Unit at Neyveli in the year 2011. He was thereafter permitted to



take voluntary retirement with effect from 01.10.2013. While he was serving under the 6th respondent, he had been issued a charge memo and the article of charge was as follows:-

"That CISF No.931401747 Head Constable/DCPO M.Anandan of Fire Wing of this Unit was brought political / outside influence for his posting back to CISF Unit SSP Salem in violation of the Govt of India decision below rule 20 of CCS (Conduct) Rules 1964 and instructions of the Department issued from time to time. He has been advised and warning issued by the Competent Authority vide letter No.E-38014/VS0/Adm/IZT-08/2008/3137 dated 28th May 2008 and E-38014/VSP/Adm.I/Posting/2008/6712 dated 05th December 2008 for 1st and 2nd time violated the Rule 20 of CCS (Conduct) Rules, 1964. However he again ignored the above instructions for the 03rd time also. This act on the part of CISF No.931401747 Head Constable/DCPO M.Anandan



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amounts to gross misconduct, indiscipline and wilfully violation of rules and instructions of the Department. "Hence the charge."

2.2. The petitioner would submit that he had submitted a response on 28.05.2009 denying the charges. He would submit that his wife had submitted an application for transfer through a politician without the knowledge of the petitioner. However, the 6th respondent proceeded to award him a punishment of withholding of two increments for the period of 2 years. Thereafter, by a corrigendum dated 30.06.2009, the 6th respondent amended the punishment to one of withholding the next increment for a period of 2 years.

2.3. Against the said order, the petitioner had filed an appeal to the 5th respondent who had rejected the appeal and thereafter, a revision to the 4th respondent which was also rejected by orders dated 22.07.2009 and 06.01.2010 respectively.



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2.4. Meanwhile, on 25.09.2011, the petitioner had made a representation to the 3rd respondent with a request to grant him Modified Assured Career Progression (hereinafter called as "MACP") benefits with effect from 19.07.2013. There was no response from the 3rd respondent and therefore the petitioner had made two representations dated 28.06.2012 and 29.06.2012. However, no orders or replies were given on the said representations.

2.5. Meanwhile, the 2nd respondent has issued a clarification regarding the implementation of the MACP scheme on 23.11.2009 which was challenged before the High Court of Delhi. By an order dated 21.05.2013, the Hon'ble Delhi High Court was pleased to allow the Writ Petition and thereafter the 2nd respondent had issued another Circular dated 17.01.2014 implementing the order of the Delhi High Court granting MACPs to all eligible force personnel.

2.6. Thereafter, on 16.06.2014 a batch of Writ Petitions were



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considered by this Court taking into account the decision of the Hon'ble Delhi High Court and the subsequent Circular dated 17.01.2014. The Writ petitions were allowed. This Court had directed the respondents to consider the claim of the respective petitioners as and when they attained the eligible period prescribed under the Assured Career Progression Scheme (herein after called as "ACP") and conferred them the benefit without any delay. Further, it was made clear that any amount already paid cannot be recovered and if recovered, should be reimbursed back. Despite the aforesaid orders the petitioner was not granted the MACP benefits. Therefore, the petitioner has come forward with the Writ in question.

3. A counter has been filed by the respondents in which the petitioner's conduct during his service had been set out. The petitioner had been wanting to return back to his hometown and for this purpose had been making several representations. The petitioner without following the proper channel had directly approached the Director General of the respondent force, expressing his grievance and requested that he be posted back to the CISF Unit, SSP, Salem.



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However, the said request was turned down by the DG/CISF on 13.05.2008. The petitioner was also issued with an advisory memo through the 5th respondent. He was directed not to repeat the misdemeanor and to ensure that he had followed the proper channel for submitting his applications. Thereafter, once again, the petitioner had requested a transfer to the IG CISF SS HQrs Chennai on 23.06.2008. Once again, his request was considered and rejected.

4. It is also the contention of the respondents that apart from approaching the higher authority in the department, the petitioner had also attempted to assert political pressure through the Health and Family Welfare Ministry, New Delhi and through the MLA of Tharmangalam Assembly Constituency. Subsequently, the Principal Secretary in the Ministry of Health and Family Welfare Government of India had forwarded the petitioner's request to the Additional Private Secretary to the Hon'ble Home Minister Government of India. Once again, the Minister of State for Home Affairs, Government of India had forwarded the request of the petitioner to the respondents. The petitioner was time and again trying to assert political influence



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for his transfer which pertained to a service matter and was therefore in violation of Rule 20 of CSS (Conduct) Rules, 1964.

5. The petitioner was issued a warning and was asked to desist from bringing political influence. The petitioner's request for transfer was already considered and rejected by the department. However, the petitioner persisted in addressing the higher authorities directly without following the proper channel. Since the petitioner had violated the instruction of the superior authorities, the petitioner was awarded the penalty of censure. While so, Uma Anandan, wife of the petitioner had submitted an application dated 06.04.2009 to the Hon'ble Union Home Minister P.Chidambaram Government of India, for transferring her husband to the CISF Unit SSP, Salem. The said request was also posted back to the CISF Unit SSP, Salem citing medical grounds. The request of the petitioner was examined by the FHQ, New Delhi and a direction was issued that the petitioner has brought political/outside influence for his transfer which is in violation of Rule 20 of the CCS (Conduct) Rules, 1964. Therefore, the decision was taken to initiate a disciplinary action against the



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petitioner. That apart, the disciplinary authority had awarded penalty of withholding of two increments for the period of two years which will not have effect of postponing his future increments of pay. Later, by a corrigendum, the penalty was amended as withholding of next increment for a period of 2 years which will not have the effect of postponing his future increment of pay. The appeal and the revision filed by the petitioner had also been turned down.

6. When the petitioner was posted at CISF Unit, VSP, Visakhapatnam and CISF Unit, NLC, Neyveli, the financial upgradation under the MACP Scheme was assessed by the Screening Committee for the years 2010, 2011, 2012 and 2013. On all these occasions the petitioner's case was rejected stating that he was ***"NOT YET FIT"***.

7. After the implementation of the VI pay commission, the ACP Scheme had been modified with the MACP scheme which came into existence with effect from 01.09.2008. The MACP scheme envisages granting of three financial upgradation to the immediate next higher



grade pay in the hierarchy of pay bands and grade pay. The first financial upgradation was to be granted on completion of 10 years of service, the 2nd upgradation on completion of 20 years of service and the 3rd upgradation after completion of 30 years of service. Even according to the respondents, in the MACP scheme only fitness/benchmark is applicable for getting the financial upgradation and the other qualifying conditions prescribed under the ACP scheme, namely, qualifying of PCC and attaining SHAPE-1 categorization had been done away with.

8. The respondents would further submit that in case an employee does not attain the prescribed fitness/benchmark in MACPs due to an indifferent service record, the granting of the financial upgradation would be postponed to such time as the individuals fulfils the same. Consequently, the delay in granting the 1st and the 2nd financial upgradation under MACP scheme will have a consequential impact on the 2nd and the 3rd financial upgradation.



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9. The Screening Committee for MACP scheme had assembled on 10/11.04.2014 at the CISF Unit, NLC Neyveli to assess the suitability in respect of the CISF Personnel of CISF Unit NLC, Neyveli for grant of financial upgradation to the next higher grade. It is the case of the respondents that the petitioner had earned 3 punishments during his past service. For granting the financial upgradation to the petitioner under the MACP scheme, the petitioner's service was assessed by the Screening Committee for the years 2010, 2011, 2012, and 2013. However, due to the currency of punishment and failure in the service record, the petitioner's case was not considered for review.

10. The respondents had thereafter denied the allegations contained in the affidavit. They would also submit that the petitioner despite being awarded a warning and punishment of censure, had persisted in bringing political pressure upon the Force/Department to ensure his transfer to his hometown, which is unbecoming of a Uniformed Personnel and a violation of Rule 20 of CSS (Conduct),



Rules 1964. The respondents would submit that the impugned order does not suffer from any error.

11. Heard the counsels on either side.

12. The case of the petitioner is that though the currency of his punishment had come to an end, he had not been granted the MACP benefits on the ground that he has been awarded two minor punishments in the last five years. The respondents on the other hand would submit that the Screening Committee has not only considered the Annual Confidential Report (ACR) but also the punishments that had been imposed on the petitioner for 5 years prior to the crucial date and considering the fact that the petitioner had been punished, he had not been considered for financial upgradation.

13. Since the issue revolves around the MACP scheme, it would be useful to understand the scheme. A perusal of the Office Memorandum dated 19.05.2009 issued by the Ministry of Personnel Public Grievance and Pension (Department of Personnel and



Training) Government of India regarding MACP Scheme for Central Government Civilian Employees would indicate that this Scheme was in supersession of the previous ACP Scheme and was applicable to all regularly appointed Group A B and C Central Government Civilian Employees except officers of the organized Group A services. Casual Employees, including those granted temporary status were not covered by this scheme. This scheme envisages the constitution of a Screening Committee in each Department to consider the case for grant of financial upgradation under this Scheme. The recommendation of the Screening Committee would be placed before the Secretary in cases where the Committee is constituted in the Ministries/Departments or before the Head of Organization/competent authority in other cases for approval.

14. The Screening Committee had been issued with a time schedule wherein they have to meet twice in a financial year preferably in the first week of January and the first week of July for advance processing of the case maturing in that half. The cases maturing during the 1st half i.e., (April - September) of a particular



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financial year shall be taken up for consideration in the 1st week of January and for the 2nd half i.e, (October-March), the screening

Committee would deliberate in the 1st week of July. The Scheme per se has been set out in annexure-I of this office memorandum. Clause 15 of the scheme contemplates that if the financial upgradation is deferred and not allowed after 10 years in the grade pay on account of an employee being unfit or due to departmental proceedings, this would have a cascading effect on the subsequent financial upgradation, which would also get deferred to the extent of the delay in granting of the 1st financial upgradation. Clause 18 of the the scheme contemplates that in case of the disciplinary/penalty proceedings, the grant of the benefit under the scheme would be regulated by the provisions of CCS (CCA) Rules, 1965 and instructions issued thereunder. In Clause 20 of the scheme, it is made clear that the financial upgradation has no relevance to the seniority position and it is purely personal to the employee.

15. Nowhere, under this scheme has it been set out that besides the Annual Confidential Report (ACR), the Screening Committee has



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to also take into account whether the employee has been subjected to any departmental punishment on account of departmental proceedings for 5 years prior to the crucial date. The respondents have themselves in their counter stated as follows:

" I respectfully submit that in MACPS, only fitness/Bench Mark is applicable for granting the Financial Up-gradation and other condition like (a) qualifying of PCC (b) attaining SHAPE-1 categorization as applicable to ACP Scheme have been discontinue"

16. A perusal of the Screening Committee's nominal role for the grant of financial upgradation to the petitioner would indicate that the petitioner was due his 1st financial upgradation on 01.07.2011. However, in the light of the currency of punishment, namely withholding of next increment for a period of 2 years without cumulative effect, issued on 30.06.2009, his case was not considered.

Thereafter, the Screening Committee had met once again on



12.09.2012. Once again, the petitioner was not considered due to a failure in his service records and the fact that he had suffered punishment within the five years prior to the crucial date. Once again, he has not been considered by the Screening Committee which held its meeting on 26.06.2013 stating that he had suffered he had suffered punishment within the five years prior to the crucial date. This observation is contrary to the scheme. That apart, the currency of the petitioner's punishment had come to an end in 2011. In 2012 he was not considered since he had not achieved the fitness/benchmark. However, on 26.06.2013, the petitioner had achieved the fitness/benchmark but he was not considered only on the ground that he had suffered punishment within the five years prior to the crucial date. The MACP Scheme only contemplates that the employee should achieve the necessary fitness/benchmark.

17. Therefore, in the light of the above, the refusal to pay the benefits under the MACP scheme to the petitioner is arbitrary and has to necessarily be set aside. The punishment has already worked itself out and therefore there is no necessity to quash the impugned orders.



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18. Accordingly, the Writ Petition is partly allowed with a direction to the respondents to pay all attendant benefits, grant financial up-gradation and revise the pension from October 2013. No costs.

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(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

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Ministry of Home Affairs, New Delhi.

2. The Director General,
Central Industrial Security Force,
CGO Complex, Lodhi Road,
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Central Industrial Security Force,
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4. The Deputy Inspector General,



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