IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.No.27496 of 2024
and
W.M.P.No.30006 of 2024

1.The Union of India,
Represented by The General Manager,
Southern Railway,
Park Town,
Chennai – 600 003.

2.The Union of India,
Represented by The Chief Personnel Officer,
Southern Railway,
Park Town,
Chennai – 600 003.

3.The Union of India,
Represented by The Divisional Personnel Officer,
Southern Railway,
Tiruchirapalli Division,
Thiruchirapalli – 620 001. ... Petitioners

Vs.

1.The Registrar,
Central Administrative Tribunal,

Madras Branch High Court Building,
Chennai – 104.

2.S.Ramachandran ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for records of the Tribunal in its impugned order dated 21.04.2023 in O.A.1494 of 2019 passed by the 1st respondent, Central Administrative Tribunal, Madras Bench and its batches and quash the same.

For Petitioners	: Mr.S.Girish For Mr.Karthikeyan, SCGPC
For R1	: Tribunal
For R2	: Mr.R.Pandian

<u>O R D E R</u>

[Order of the Court is made by **S.M.SUBRAMANIAM, J.**]

Under assail is the order dated 21st April, 2023 passed in O.A.No.1494 of 2019.

2. The Union of India has preferred the present writ petition under Article 226 of the Constitution of India. The 2nd respondent has filed

O.A.No.1494 of 2019, seeking III Modified Assured Career Progression Scheme (MACP Scheme) benefits with effect from 27.05.2012, and consequential benefit, including re-fixing his pay and paying arrears and other benefits. Rejection order of the appellant was also sought to be set aside before the Tribunal.

3. The Tribunal considered the issues and disposed of the original application on 21st April, 2023, granting liberty to the respondents to pass appropriate orders, subject to the outcome of the Review Petition No.140 of 2016 pending before the High Court and Special Leave Petition in S.L.P.No.12140 of 2019.

4. The learned Senior Central Government Panel Counsel appearing on behalf of the petitioners would submit that as per the MACP Scheme, III MACP Scheme benefits were granted to the 2nd respondent on 1st September, 2018, on completion of 10 years of service from the date of grant of II MACP Scheme benefits. Thus, the III MACP Scheme benefits were granted in accordance with the terms of the scheme and the 2nd respondent is not eligible or entitled to seek III MACP Scheme benefits from the year 2012 as

such sought for in the original application filed before the Tribunal. This is because the MACP Scheme guidelines specify that the benefits are granted on completion of 10, 20, and 30 years of service.

5. The learned counsel appearing on behalf of the 2nd respondent would oppose by stating that Clause (5) of the MACP Scheme pertains to promotions earned/upgradations granted under the ACP Scheme, which was not properly considered by the appellants in the case of the 2nd respondent. In support of the said clause, the learned counsel for the 2nd respondent relied on the illustrations given in Clause (28) of the MACP Scheme.

6. According to the 2nd respondent, the III MACP Scheme benefits should have been granted with effect from 27.05.2012. However, these benefits were erroneously granted to the 2nd respondent from 01.09.2018. The Tribunal has failed to consider the merits of the case and instead disposed of the original application, granting liberty to the respondents to decide the issues subject to the outcome of the review petition and special leave petition (SLP).

7. The Tribunal has further held that the similar issue has been decided

in original application in O.A.No.82 of 2020 dated 11.07.2022. In view of the pendency of the review application, the Tribunal has not considered the merits involved with reference to the relief sought for by the 2nd respondent in the original application. Thus, it is necessary to examine the scope of the scheme to determine the eligibility of the 2nd respondent to claim III MACP Scheme benefits.

8. The Government of India, Ministry of Railways, pursuant to the recommendations of the Sixth Central Pay Commission issued proceedings dated 10.06.2009, granting Modified Assured Career Progression Scheme (MACP Scheme) for Railway Employees.

9. Clause (1) of MACP Scheme stipulates “There shall be three financial upgradations under the MACPS, counter from the direct entry grdae on completion of 10, 20 and 30 years of service respectively. Finance upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same Grade Pay”.

10. Clause (5) of MACP Scheme stipulates “Promotions

earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same Grade Pay due to merger of pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACPS".

11. Holistic reading of above Clauses (1) and (5) reveals that the scheme provides for three financial upgradations. These upgradations are granted from direct entry grade upon completion of 10, 20 and 30 years of services, respectively. Consequently, the period of service is reckoned from the entry grade of the employees.

12. The Scheme further states that financial upgradation will be admissible, whenever an individual has spent 10 years continuously in the same grade. Therefore, an employee, who remains in the same grade pay for 10 years becomes eligible for financial upgradations under MACP Scheme.

13. Clause (5) clarifies that promotions earned or upgradations granted under the ACP Scheme in the past to those grades that now carry the same grade pay due to merger of pay scale or upgradation of posts recommended

by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations.

14. The primary purpose of Clause (5) is to address the situation, where the revision of pay scales pursuant to the Sixth Pay Commission, if resulted in same grade pay leading to no upward monetary benefits, then such merger of pay scales or upgradation of posts recommended by the pay commission shall be ignored.

15. However, the said circumstances typically arises in the event of pay anomalies, rather than in normal cases, where the upgradations are granted as per Clause (1) on completion of 10, 20 and 30 years. In other words, Clause (5) is applicable only in the event of pay anomalies, but not otherwise. Pay anomalies arouse on account of merger of scales or upgradation of posts.

16. Let us now examine the service particulars of the 2nd respondent. Admittedly, the 2nd respondent joined as a Traffic Controller on 06.02.1989, which is the entry-grade position. He was promoted to the post of Deputy Chief Controller on 27.05.1992 within a period of 2.5 years. The posts of Deputy Chief Controller and Chief Controller were merged into a single pay

band. Consequently, the pay of the 2nd respondent was fixed accordingly.

17. Admittedly, on competition of 10 years from the last effective promotion i.e., the promotion to the post of Deputy Chief Controller granted to the 2nd respondent on 27.05.1992, II MACP Scheme benefits were granted to the 2nd respondent. However, II MACP Scheme benefits were granted to the 2nd respondent with effect from 01.09.2008, as the scheme itself came into force with effect from 01.09.2008. Consequently, upgradation was granted to the 2nd respondent to pay band PB-2 with grade pay GP4800.

18. Further, the period of 10 years for grant of III MACP Scheme benefits is to be calculated from 01.09.2008. However, the 2nd respondent wrongly set out his claim on the ground that the period of 10 years completed in the post of Deputy Chief Controller on 27.05.2002, and therefore, he is eligible to claim III MACP Scheme benefits in the year 2012. This calculation is erroneous, as the scheme itself was not in force during the year 2002 and it came into force with effect from 01.09.2008. Since the scheme did not existed, employees cannot claim benefits that were non-existent.

19. The benefits of III MACP Scheme came into force on 01.09.2008

and II MACP Scheme was granted to the 2nd respondent with effect from 01.09.2008. Therefore, the appellants rightly granted III MACP Scheme benefits with effect from 01.09.2018, on completion of 10 years from the effective date of second upgradation, thereby extending the benefit of III MACP Scheme.

20. When the 2nd respondent accepted the 2nd MACP Scheme benefits with effect from 01.09.2008 and the said date remained unchallenged, he cannot claim the benefit of III MACP Scheme from 27.05.2002. Such a ground is untenable. Scheme was not available prior to 01.09.2008 and it was implemented prospectively. After implementation of the scheme, the II MACP Scheme was granted to the 2nd respondent on 01.09.2008. Consequently, on completion of 10 years, III MACP Scheme benefits were granted from 01.09.2018.

21. Therefore, the 2nd respondent has not made out a case for grant of relief in his original application. The directions issued by the Tribunal are not in consonance with the terms of the MACP Scheme. Thus, we are inclined to interfere. Accordingly, O.A.No.1494 of 2019 dated April 21, 2023, is set aside and the Writ Petition stands allowed. The connected Miscellaneous Petition is closed. There shall be no order as to costs.

[S.M.S., J.] **[M.J.R., J.]**
22.11.2024
(1/2)

Index : Yes
Speaking order
Neutral Citation : Yes

Jeni

To

The Registrar,
Central Administrative Tribunal,
Madras Branch High Court Building,
Chennai – 104.

S.M.SUBRAMANIAM, J.
AND
M.JOTHIRAMAN, J.

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W.P.No.27496 of 2024

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