



Writ Petition No.28 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
17.04.2024

PRONOUNCED ON
04.06.2024

CORAM

**THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Petition No.28 of 2024
and W.M.P.No.17 of 2024**

- 1.Union of India,
Represented by Secretary,
Railway Board,
Rail Bhavan, Raisina Road,
New Delhi – 110 001.
- 2.The General Manager,
Southern Railway,
Park Town, Chennai – 600 003.
- 3.The Divisional Railway Manager,
Chennai Division,
Southern Railway,
NGO Annex, Park Town,
Chennai – 600 003.
- 4.The Senior Divisional Personnel Officer,
Chennai Division,
Southern Railway,
NGO Annex, Park Town,
Chennai – 600 003.

... Petitioners

Vs



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1.Dhanagopal

2.The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai – 600 104.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records relating to the impugned order passed by the second respondent i.e. the Central Administrative Tribunal, Chennai Bench in O.A.No.1747 of 2014 dated 10.03.2023 and quash the same and pass such further order.

For Petitioners : Mr.C.Samivel
SPC

For Respondents : Mr.R.Pandian for R1
: R2 – Tribunal

ORDER

(Order of the Court was made by Mr.K.KUMARESH BABU.,J.)

This Writ Petition had been preferred as against the order of the Central Administrative Tribunal, wherein, the Central Administrative Tribunal and its order dated 19.03.2023 had set aside the orders impugned therein and had directed refixation of the pay of the first respondent at Rs.7,250/- with Grade Pay of Rs.5,500/- -Rs.9000/- as on 01.01.2004 and afford the arrears arising out of the refixation.



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2. Heard Mr.C.Samivel, learned Senior Central Government Standing Counsel for the petitioners and Mr.R.Pandian, learned counsel appearing on behalf of the first respondent.

3. The learned Standing Counsel appearing on behalf of the petitioners would submit that the first respondent was originally appointed as a Traffic Apprentice in the year 1987 and was regularly absorbed as Station Master Grade -III in the year 1989. In the said grade, he was also granted the first MACP on 16.01.2001 ie., on completion of 12 years of his service. Thereafter, by LDCE, the first respondent was promoted as Section Controller. Since, there was a change in policy with regard to Assured Career Progression Scheme, the first respondent on completion of 20 years of service was granted second MACP on 15.01.2009.

4. He would further submit that the first respondent has earlier approached the Central Administrative Tribunal in O.A.No.442 of 2011 seeking for a prayer to fix his basic pay at Rs.6,725/- with effect from 03.09.2003 and at Rs.7,075/- with effect from 16.04.2004 by order dated 13.06.2012, the Tribunal had allowed the said O.A. Pursuant to the said



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directions issued by the Tribunal, the pay scale was also revised by the Department by its order dated 25.10.2002. Still being aggrieved, the first respondent approached the Tribunal in O.A.No.310/00222/2014 seeking to refix the pay of Rs.7,250/- with effect from 01.01.2004, pursuant to the implementation of the VI Pay Commission recommendations. By Order dated 21.02.2014, the Tribunal had disposed the same with a direction to the petitioners to consider the case of the first respondent and pass appropriate orders. Pursuant to the said direction, the petitioners vide proceedings dated 25.06.2014, had informed the first respondent that his request has been considered and arrears if any would be paid shortly. Thereafter, by order dated 02.09.2014, he was informed that his claim could not be considered and revised pay cannot be fixed. By Memorandum dated 05.11.2014, the pay fixed was revised as requested by the first respondent. He would submit that the petitioners fixed the pay at Rs.7,075/- with grade pay 5500-9000 pay scale as on 01.01.2004 and the same has been revised with pay at Rs.7,250/- with Grade Pay of Rs.5,500/- -Rs.9000/- as on 01.01.2004. However, still not being satisfied with the revised pay, as he had not been confirmed with MACP as calculated by him, the first respondent had approached the



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Tribunal, firstly to fix the pay at Rs.7,250/- in scale of 7,500-9,000 as on 01.01.2004 as directed by order of the Tribunal dated 21.02.2014 and to grant first Financial Upgradation with Grade Pay of 4,600 as on 01.09.2008 and to grant further Financial Upgradation in Grade Pay-II of Rs.4,800/- as on 15.01.2009 and fix the first respondent's pay scale at Rs.16,450 + 4,800 and 17,760 + 4,800 respectively.

5. According to him, the first respondent Grade Pay had been revised by the order impugned as claimed by him as directed by the Tribunal in the earlier orders passed by the Tribunal. But, however under the impugned order, the Tribunal had now directed to fix the pay scale of the first respondent at Rs.7,250/- with Grade Pay of Rs.5,200–Rs.9000/- under the V Pay Commission as on 01.01.2004 and afford the petitioner arrears arising out of the above re-fixation. The claim of the first respondent for grant of MACP was by relying upon Clause 5 of the MACP Scheme which would not be applicable to him. According to the Department, it is only Clause 8 which should be applicable to him. But, however, the Tribunal has wrongly held that it would be only Clause 5 that will be applicable to the case of the first respondent and not Clause 8.



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6. In that context, he would submit that the case squarely falls under Clause 8 of the MACP Scheme and not Clause 5. He would submit that the Clause 5 of the Scheme would be applicable only when the promotion earned upgradations granted under the ACP Scheme under the post when on merger of pay scale or Upgradation of posts recommended by the VI Pay Commission are the same, then such promotion or Upgradation earned should have to be ignored for the purpose of granting Upgradation.

7. In the present case, according to him, the first respondent was granted first ACP on 16.01.2001. Thereafter, he had also earned the first promotion as Section Controller. He was given a pay under the pay scale of 5500-9000. Therefore, he would submit that when MACP Scheme was introduced, the first respondent had already been granted the first ACP under the said Scheme on completion of 12 years and only because of grant of first ACP, he had the higher pay scale which was the same pay scale to the first promotion that he was given by the VI Pay Commission, the Pay Scale of the post of Station Masters Grade-III.

8. According to him, it is only Clause 8 which would be applicable



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since the promotion earned in the post carrying the same Grade Pay in the promotional hierarchy should be counted for the purpose of MACP. In that context, he would submit that the cadre in which the first respondent was working and carried a pay scale of Rs.5,000-8,000 treating the promotional post cadre pay scale of Rs.5,000-9,000 during the V Pay Commission. The first respondent is trying to take advantage of the ACP granted to him by which his pay has been increased from Rs.5,500 to Rs.9,000 which was in the same Pay Band. Therefore, he would submit that Clause 5 cannot be applicable since the pay scales are different eventhough the Grade Pay is same and therefore, the same should be counted. Hence, he would seek interference of the order passed by the Tribunal.

9. Countering his arguments, Mr.R.Pandian, learned counsel appearing for the first respondent would submit that the said issue is no longer *res integra* and the same has been considered by the Madhya Pradesh High Court, wherein, it has been held that in such cases, Clause 5 would only be applicable and not Clause 8. He would further submit that the Madhya Pradesh High Court judgment has been affirmed by the Hon'ble Apex Court, in view of the dismissal of the SLP filed by the Madhya



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Pradesh Government in that regard. Therefore, he would submit that no error apparent on the part of the Tribunal in passing the aforesaid order by directing the Department to refix the pay of the first respondent as claimed by him.

10. We have considered the rival submissions made by the learned counsels appearing on either side and perused the materials available on record before this Court.

11. The first respondent had filed the petition seeking for the following reliefs:-

(i) to fix the pay of the applicant at Rs.7250 in scale 550-9000 (V CPC) as on 01.01.2004 as accepted vide impugned orders. Consequent to the order by this Hon'ble Tribunal OA 319/00222/2014 dated 21.02.2014,

(ii) to grant financial up-gradation (I-MACP) in PB-2 with GP 4600 as on 01.09.2008 and fix the applicant's pay at Rs.16460+4600(GP),

(iii) to grant financial up-gradation (II-MACP) in PZ-2 with GP 4800 on 15.01.2009 and fix the applicant's pay at Rs.16460+4600 (GP, refix the same at Rs.17760+4800 as pm



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01.07.2009.

(iv) to pay the consequential arrears of pay

12. In fact he had originally approached the Tribunal by filing O.A.No.422 of 2011, wherein his specific prayer was to fix the basic pay of Rs.6,725 with effect from 03.09.2003 and Rs.7075 with effect from 16.01.2004. The said order has been complied with by the Department by its proceedings dated 26.12.2012. However, by further O.A.No.310/00222/19, he had again approached the Tribunal to refix his pay at Rs.7250 with effect from 01.01.2004. The reason for approaching the Tribunal was that admittedly, an erroneous claim had been made by him.

13. Firstly, we are of the opinion that he ought to have filed a Review Application rather than filing individual application. Be that as it may, the Tribunal has directed the petitioners to consider the case of the first respondent. By proceedings dated 02.09.2014, even though the fourth petitioner had rejected the request of the first respondent, by proceedings dated 05.11.2014, the fourth respondent seems to have acceded to the request since the pay as on 01.01.2004 had been revised to Rs.7,250 with effect from 01.01.2004.



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14. In such view of the matter, the first prayer made by the first respondent had been complied with by the fourth respondent herein. In so far as with respect to the order of the Tribunal directing to refix the pay scale at Rs.7,250 is without any basis as the same has been already granted. As regards to his claim for grant of MACP-I and MACP-II, it is to be noted that the first respondent had been granted the first MACP on completion of 12 years and thereafter, he had secured the promotion by qualifying himself in the Limited Department Examination. This could not be said to be a promotion in regular course based upon his service in the Feeder Category. Clause 5 could only be invoked or applied when the incumbent had secured ACP or promotion in the normal course on the strength of his service in the Feeder Category and in view of the merger under the VI Pay Commission, if the Grade Pay are equal, then the same cannot be counted. In this case the promotion earned by the first respondent was not in the normal course, but only due to him qualifying in the Limited Department Examination. Therefore, such promotion would have to be counted for grant of MACP by only Clause 8 of the MACP Scheme and he would not be entitled to benefit of Clause 5. Therefore, we are of the view that the petitioners have rightly



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granted the second MACP to the first respondent on him completing 20 years of service. The judgment of the Madhya Pradesh High Court cannot be applied to the facts of this case.

15. For the foregoing reasons, we are of the view that since the first respondent's pay scale has been revised by the Memorandum dated 05.11.2014 as per the prayer sought for by the first respondent in the Original Application, the first prayer sought for by the first respondent would have to be rejected as the relief had already been granted to him. The first respondent's second prayer for grant of MACP, as claimed by him is devoid of merits.

16. In fine, we are inclined to interfere with the order passed by the Tribunal. This Writ Petition is allowed and the order passed in O.A.No.1747 of 2014 is set aside. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.



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(D.K.K.,J.) (K.B., J.)
04.06.2024

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Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
gba

D. KRISHNAKUMAR., J.
and
K.KUMARESH BABU.,J.

Gba

To

The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai – 600 104.

A Pre-delivery order made in
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