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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 10.04.2024***+ **W.P.(C) 11275/2023 AND CM APPL. 43879/2023 –Stay & CM APPL. 48456/2023****COMMISSIONER OF POLICE AND ORS Petitioners**

Through: Mrs. Avnish Ahlawat, Standing Counsel with Mr. Nitesh Kumar Singh, Advocate.

versus

SATENDER KUMAR SHARMA AND ORS RespondentsThrough: Ms. Esha Mazumdar, Mr. Setu Niket, Ms. Unnimaya S. Mr. Ishan Singh and Ms. Chetna, Advocates for R-1 and 2.
Mr. Kanhaiya Singhal, Mr. Anmol Chopra, Mr. Udit Bakshi, Mr. Ujwal Ghai, Mr. Prasanna and Mr. T.Singh and Ms. Deepali Pawar, Advocates for R-4.**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)**

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 09.01.2018 passed by the learned Central Administrative Tribunal in O.A.2400/2017. The petitioner also assails the subsequent order dated 26.04.2023 passed in M. A. No. 5220/2018 and order dated 02.08.2023 in CP No.



623/2018 vide which the petitioners' applications for clarification were rejected. Vide the impugned order dated 09.01.2018, the learned Tribunal has allowed the original application filed by the respondents by relying on its decision in O.A.1288/2014 titled ***Manju Vashistha and Ors. Vs. UOI and Ors.***, by noting that the said decision had been unsuccessfully assailed, not only before this Court, but also before the Apex Court and had, therefore, attained finality.

2. The sole submission of learned counsel for the petitioners is that the learned Tribunal has erred in allowing the OA preferred by the respondents by relying on its decision in ***Manju Vashistha*** (supra) without appreciating the fact that the respondents were not identically placed as the applicants in the said decision. She submits that the applicant no. 1 in ***Manju Vashistha*** (supra), had joined service as a Head Constable (Ministerial) on 12.08.1983 and, was thereafter, promoted as ASI on 11.11.1991. Consequently, she was granted the benefits of 2nd MACP on 01.09.2008 and was allowed the benefits of 3rd MACP on 11.11.2011 by taking into account her 20 years service from the date of her first promotion, i.e., 11.11.1991. On the other hand, the respondents after being appointed as Head Constable (Ministerial) on 12.08.1983 were promoted as ASI on 07.12.1988. They were thereafter granted the benefits of 2nd ACP on 12.08.2007, i.e., after they had completed 24 years of service.

3. She contends that the respondents having been granted the benefits of 2nd ACP on 12.08.2007, they were entitled to receive the benefits of 3rd MACP only after completion of ten years service from 12.08.2007. She, therefore, prays that the impugned order which



proceeds on the premise that the respondents are similarly situated as the applicants in ***Manju Vashistha*** (supra) be set aside.

4. *Per contra*, learned counsel for the respondents supports the impugned order and submits that the learned Tribunal has rightly relied on the decision in ***Manju Vashistha*** (supra) as the issue raised in both cases is identical. The issue being as to whether an employee has to necessarily wait for 30 years before getting the benefits of 3rd MACP or the same could also be payable after 20 years of earning the first promotion. She submits that merely because, like the applicants in ***Manju Vashistha*** (supra), the respondents were able to earn their first promotion within five years of their joining service, would not imply that they would not be entitled to receive the benefits of 2nd and 3rd MACP after completion of 10 years and 20 years service respectively from the date of their first promotion.

5. By drawing our attention to the decision dated 03.02.2017 of this Court in W.P.(C) 11826/2016 titled as ***Union of India & Ors. Vs. Manju Vashistha and Ors.*** wherein, the challenge laid to the Tribunal's decision in ***Manju Vashistha*** (supra) was rejected, she contends that like the respondents, the applicants in ***Manju Vashistha*** (supra) had also earned their first promotion in less than 10 years. Once this Court has upheld the grant of 3rd MACP to the applicants in ***Manju Vashistha*** (supra) after 20 years of their first promotion, even though they had not completed 30 years service from the date of their joining service. Consequently, the petitioners being bound by the said decision, cannot now be permitted to discriminate against the respondents by urging that they were entitled to receive the benefits of



3rd MACP only after completion of 30 years of service. She, therefore, prays that writ petition be dismissed.

6. Having considered the submissions of the learned counsel for the parties and perused the record, we are of the view that the learned counsel for the respondents is correct in urging that the issue raised in the present petition is identical to that as was raised in **Manju Vashistha** (supra). As we find that this issue as to whether the benefits of 3rd MACP can be granted to an employee only after 30 years service or whether the same can be granted even after 20 years service from the date of earning the first promotion has been amply clarified by this Court in **Union of India & Ors. Vs. Manju Vashistha and Ors.**, (supra), we can do no better than to refer to para nos. 6 and 7 of the said decision, which read as under:-

“6. The argument raised by the petitioners overlooks and negates paragraph 1 of the MACP Scheme quoted above. The paragraph postulates grant of financial upgradation in 2 different set of circumstances and situations, as noticed above. The first situation would be applicable in case the person has not earned any promotion whatsoever, and the second situation relates to cases where a person has earned either first or second promotion and has continued to remain in the same grade pay for the 10 or as the case may be for 20 years. The two situations are independent. It would be wrong to read the requirement that the employee should have completed 30 years of service from the direct entry for being entitled to grant of the third financial upgradation, even if he has spent 10 years in the same grade pay after the last financial upgradation/promotion. The second sentence of paragraph 1 in the plain language states that financial upgradation will be admissible whenever an employee has spent 10 years continuously in the same grade pay. It does not state that the employee will not be entitled to second or third financial upgradation even if he has spent 10 years in the grade pay if he has not completed 20 or 30 years of service from the date of initial entry. The date of direct entry is immaterial for the second sentence of paragraph 1, and the period of 10 years is to be counted from the date of promotion or



upgradation in the next grade pay.

7. Paragraph 9 of the MACP Scheme quoted above states that the term „regular service“ would include „continuous regular service“ in another Government department in a post carrying the same grade pay prior to regular appointment in the new department. This is indicative that the grade pay being paid to an employee may be the relevant consideration. The date of direct entry may not be relevant in a given case. Paragraph 22 of the MACP Scheme stipulates that where an employee was not covered by the ACP Scheme and has completed 30 years of regular service, his pay shall be fixed by giving benefits of next three higher grade pays in the hierarchy of the revised pay bands. In other words, he would not be given the first or the second, but the third financial upgradation. The same is the position where an employee has completed 20 years of service, but not 30 years of service from the date of initial joining and is entitled to benefits of the MACP Scheme. Such employees are directly granted second financial upgradation.”

7. In the light of the aforesaid, we find that once this Court has already held that the date of direct entry may not always be relevant for the purposes of grant of benefits under the MACP scheme, what needs to be considered is as to whether an employee has spent 10 years or 20 years, as the case may be, in a particular grade. As we find that like the applicants in **Manju Vashistha** (supra), the respondents had also earned their first promotion before 10 years of their entry in service, we are of the view that they are entitled to the similar benefits. Once the petitioners have granted the benefits of 3rd MACP to the applicants in **Manju Vashistha** (supra) without the applicants therein completing 30 years service from the date of their entry into service, they cannot be permitted to urge that the respondents would not be granted the benefits of 3rd MACP till they complete 30 years of actual service.

8. The purpose of MACP is to avoid stagnation of employees in a



grade and to ensure that every employee is granted some upgradation of pay after every 10 years of service unless he/she has earned a promotion in those 10 years. In our considered opinion, once the respondents had completed 20 years of actual service from the date of their first promotion, they were certainly entitled to receive the benefits of 3rd MACP from that date and could not be told that they must wait for completion of 30 years of actual service before they are granted the benefits of 3rd MACP. We are, therefore, of the view that the learned Tribunal was justified in holding that the case of the respondents was squarely covered by the decision dated 03.02.2017 of this Court in *Union of India & Ors. Vs. Manju Vashistha and Ors.*

9. For the aforesaid reasons, we find no infirmity in the impugned order. The writ petition being meritless is, accordingly, dismissed alongwith pending applications.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

APRIL 10, 2024/ib