



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Reserved on: July 02, 2024**
Pronounced on: July 31, 2024

+ **W.P.(C) 9322/2023 & CM APPLs.35509/2023, 37667/2023**

UNION OF INDIA & ANR.Petitioners
Through: Mr. Anshuman, Sr. Panel Counsel &
Mr. Piyush Ahluwalia, Advocates

Versus

VED PRAKASHRespondent
Through: Mr. R. Ramachandran, Amicus
Curiae Counsel

+ **W.P.(C) 8979/2024 & CM APPLs. 36650-51/2024**

UNION OF INDIA & ANR.Petitioners
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Mr. Piyush Ahluwalia, Advocates

Versus

VED PRAKASHRespondent
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CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE GIRISH KATHPALIA

JUDGMENT



SURESH KUMAR KAIT, J

1. The above captioned first petition W.P.(C) 9322/2023 has been preferred by petitioners against the judgment and order dated 12.09.2022 passed in RA No.174/2016 and order dated 28.08.2012 passed in OA No.624/2012 by learned Central Administrative Tribunal ('Tribunal').
2. The above captioned second petition W.P.(C) 8979/2024 has been preferred by petitioners against the judgment and order dated 09.01.2024 passed in OA No.1078/2023 and order dated 12.03.2024 passed in C.P. No.210/2024 by learned Tribunal.
3. Since the facts emerging in these petitions and parties are similar, therefore, with the consent of learned counsel for parties, these petitions were heard together and are being disposed of by this common judgment.
4. The backfirth of the case is that respondent-Ved Prakash was engaged as Photocopier on ad-hoc basis with petitioner No.2-Central Administrative Tribunal ('CAT') on 01.10.1986 and was regularized on the same post on 01.07.1987 in the pay-scale of Rs.3050-4590/-.
5. Pursuant to introduction of Fifth Central Pay Commission ('CPC') and its recommendations, two financial upgradations in the promotional hierarchy on completion of 12 and 24 years of service, was introduced on 09.08.1999. One Raj Pal, who was at serial No.2 in the seniority list of Photocopiers of CAT, preferred an application No.278/CH/2004 before the Chandigarh Bench of the learned Tribunal, seeking benefits of financial upgradation under Assured Career Progression Scheme ('ACP') and he was granted first financial upgradation in the pay scale of 4000-6000/- and second financial upgradation 5500-9000/- under the ACP. The petitioners



herein preferred W.P.19387/2011 before the High Court of Punjab & Haryana which was dismissed vide judgment dated 23.05.2007 upholding the order of the learned Tribunal.

6. The 6th CPC introduced Modified Assured Career Progression ('MACP') w.e.f. 01.09.2008, suspending the old ACP, where-under three financial upgradations were granted on completion of 10, 20 and 30 years of service.

7. Rajpal, who had completed 20 years of service on 11.10.2007, was granted second financial upgradation in the Pay Band of 2800/- vide order dated 17.11.2009 which was challenged by him before the learned Tribunal seeking financial upgradation in Pay Band II with Grade Pay 4600/- in promotional hierarchy. The learned Tribunal of Chandigarh Bench vide order dated 31.05.2011 directed the petitioners to grant MACP from due date and thereby quashing the order granting Pay Band I with Grade Pay 2800/- to Raj Pal.

8. The petitioners challenged the order dated 31.05.2011 by filing W.P. 19387/2011 before the High Court of Punjab & Haryana which was dismissed vide order dated 19.10.2011. The petitioners preferred special leave petition before the Hon'ble Supreme Court against the dismissal of the said petition and vide judgment dated 19.10.2011, the same was dismissed on the ground that no plausible explanation was given by the petitioners for delay in filing the said Special Leave Petition. Hence, the order dated 31.05.2011 passed by learned Tribunal was implemented in respect of Raj Pal.

9. The respondent-Ved Prakash, who as per seniority list dated 31.05.2000 was shown at serial No.1, filed a representation before CAT



seeking seniority and pay fixation on parity with Raj Pal which was dismissed by the petitioners.

10. Being aggrieved, the respondent preferred OA No.624/2012 seeking grant of Pay Band II with Grade Pay 4600/- instead of Pay Band I Grade Pay 2800/- as granted to his immediate junior Raj Pal. The learned Tribunal vide order dated 28.08.2012 allowed the respondent's OA thereby directing the petitioners to grant similar benefits to respondent Ved Prakash as were granted to Raj Pal on the basis of outcome of the Special Leave Petition, which was pending adjudication at that point of time.

11. Against the aforesaid order dated 28.08.2012 passed by the learned Tribunal, the petitioners preferred W.P.(C) 7750/2013 before this Court which was disposed of vide order dated 09.12.2013, with liberty to the petitioners to file appropriate application before the learned Tribunal to decide the issue afresh as per law.

12. The petitioners preferred application No.454/2014 before the learned Tribunal seeking restoration of OA No.624/2012, however, the same was withdrawn with liberty to file a review application in the case.

13. The petitioners preferred Review Application No.174/2016 on the ground that instructions given to counsel were different and that the similar issue was pending before the Hon'ble Supreme Court in ***Union of India & Ors. Vs. M.V. Mohanan Nair*** (2020) 5 SCC 421.

14. The said Review Application No.174/2016 was dismissed by the learned Tribunal vide order dated 12.09.2022 with direction that the benefits as prayed by the applicant/respondent herein have already been granted to him vide order dated 28.08.2012 passed in OA and also that the review sought by filing review application, was more than 10 years old.



15. The respondent- Ved Prakash preferred OA No.1078/2023 before the learned Tribunal seeking release of all the retiral benefits including pension, commutation of pension, leave encashment & gratuity of the respondent alongwith arrears and interest @ 12 % per annum on all arrears including gratuity with costs. The learned Tribunal, in view of the fact that no stay was granted by this Court in W.P.(C) 9322/2023, vide its order dated 09.01.2024 held that the direction of the learned Tribunal prevailed and directed the petitioners to comply with its order dated 28.08.2012 within four weeks.

16. Since the directions of the learned Tribunal were not complied with and respondent was not granted his retiral benefits, he preferred C.P. 210/2024 before the learned Tribunal against the petitioners for non-compliance of order dated 09.01.2024 passed in OA No.1078/2023, which was disposed of vide order dated 12.03.2024 by the learned Tribunal in view of the fact that W.P.(C) 9322/2023 was pending before this Court.

17. In the above captioned first petition W.P.(C) 9322/2023, the petitioners have challenged the order dated 28.08.2012 passed in O.A. No. 624/2012.

18. By way of filing second captioned petition being W.P.(C) 8979/2024, the petitioners have challenged the order dated 09.01.2024 passed in OA No.1078/2023 and order dated 12.03.2024 in C.P. 210/2024.

19. Relevantly, the challenge to the order dated 12.09.2022 passed by the learned Tribunal in Review Application No.174/2016; order dated 09.01.2024 in OA No.1078/2023 and order dated 12.03.2024 in C.P. 210/2024 passed by the learned Tribunal, spring out of order dated 28.08.2012 passed by the learned Tribunal in OA No.624/2012 whereby the



respondent has been given benefit of MACP scheme. Thereby directing the petitioners to fix respondent's pay on parity with Raj Pal.

20. The challenge to the various orders passed by the learned Tribunal is on the ground that the learned Tribunal did not appreciate that the Hon'ble Supreme Court in *M.V. Mohanan Nair (supra)* has observed that when a Special Leave Petition is dismissed by a non-speaking order, by such dismissal, the Hon'ble Supreme Court does not lay down any law as envisaged under Article 141 of the Constitution of India and since Raj Pal's case has been dismissed on the ground that no sufficient cause was shown for the delay in refiling, Raj Pal's case ought not to have been quoted as precedent by the High Courts in various matters.

21. Petitioners have contended that the respondent-Ved Prakash was granted Second MACP in Grade Pay of 4600/- subject to disposal of writ petition preferred before this Court as well as outcome of Special Leave Petition in the case of Raj Pal and pursuant to Supreme Court's observations in *M.V. Mohanan Nair (supra)*, he does not deserve benefit of Rajpal's case.

22. It is a matter of fact and record, respondent upon attaining the age of 60 years, superannuated on 31.07.2022 and has been given provisional pension. However, due to pendency of the present petition, he has not been granted benefit of Second MACP with Grade Pay Rs.4,600 and thus, not given benefit of Rajpal's case.

23. To the contrary, the stand of respondent before this Court is that he has been made to suffer for too long at the hands of petitioners for the benefits he is entitled to and this petition deserves to be dismissed.

24. The arguments advanced by learned counsel representing both the



sides were heard at length and the impugned judgment as well as other material placed on record has been carefully perused.

25. Relevantly, the learned Tribunal vide order dated 28.08.2012 allowed the respondent's O.A. No. 624/2012 directing the petitioners to grant similar benefits to respondent Ved Prakash, as were granted to Raj Pal, while observing that the Special Leave Petition filed before the Hon'ble Supreme Court was not listed and also because Mr. Rajeev Kumar, learned counsel for the respondents, submitted that on provisional basis similar benefits could also be extended to the applicant. The learned Tribunal, thus, on consensual basis, disposed of the petition directing the petitioners to extend the benefits to respondent as have been granted to Rajpal.

26. Against the aforesaid order dated 28.08.2012, the petitioners preferred W.P.(C) No. 7750/2013 before this Court, however, the same was dismissed as withdrawn vide order dated 09.12.2013 while observing as under:-

"5. Dismissing the writ petition as withdrawn, we observe that if the petitioners were to file an appropriate application with respect to the order dated August 28, 2012 withdrawing the consent given by the counsel for the petitioners and request the Tribunal to decide the issue afresh keeping in view the pleadings in the reply to the OA the said application shall be decided as per law"

27. The petitioners in the Review Application No.174/2016 pleaded before the Tribunal that the issue involved was pending before the Hon'ble Supreme Court in ***M.B. Mohanan Nair (Supra)*** and the review application was adjourned *sine die*. However, after decision in ***M.B. Mohanan Nair (Supra)***, the review application was revived and was dismissed by the



learned Tribunal vide impugned order dated 12.09.2022, holding as under:-

“4. We find that the order passed by this Tribunal indicates that this Tribunal while granting the relief to the applicant quoted the judgment of this Tribunal in the case of one Raj Pal, who had been given similar benefits. The said judgment had been affirmed by the Hon’ble High Court of Punjab and Haryana vide its judgment dated 19.10.2011.

5. Learned counsel for the respondents in the OA, gave his consent to the same. The said consent is obviously based on the judicial precedent. Moreover, the order sought to be reviewed is 10 years old, and the applicant in the OA, who was a Group-C employee, has since retired and the limited benefit he got was financial upgradation under the Assured Career Progression Scheme. It is our considered view that there is no cogent ground to seek the review of the order, which has been passed strictly on merit and on the basis of judicial precedent. Accordingly, we do not think that this review application requires any interference and the same is dismissed.”

28. In the afore-noted extract of impugned order dated 12.09.2022 the learned Tribunal has taken note of the fact that learned counsel for the petitioners gave consent for extending the benefit of promotion as in the case of Rajpal and on consensual basis the order was passed.

29. The primary question for determination before this Court is as to whether the respondent was entitled to promotion as was granted in the case of Rajpal, especially when the Hon’ble Supreme Court in **M.B. Mohanan Nair (Supra)**, has observed that *“in the case of Raj Pal, the post of Photocopier, being an isolated post, the order was passed in the peculiar*



facts and circumstances of the case. Rajpal's case did not go into any details in respect of the overall features of the new MACP Scheme and did not consider the recommendations of the expert body which culminated in the new Scheme." The Supreme Court, taking elaborative note in Rajpal's case, observed and held as under:-

"Raj Pal Case –

39. Whether could have been taken as a precedent:- In almost all the cases, the High Courts have relied upon Raj Pal's case only on the basis that Raj Pal's case was dismissed by the Supreme Court. Even at the outset, it is to be pointed out that Raj Pal's case, SLP (C) No.CC 7467 of 2013 was dismissed by the Supreme Court vide order dated 15.04.2013 on the ground that there was no sufficient explanation to condone the delay in refiling the Special Leave Petition which is a default in the manner in which the case was prosecuted and not a dismissal on merits. Be that as it may, since various High Courts have relied upon Raj Pal's case, it is necessary to refer to the facts, findings thereon and whether it could have been followed as precedent.

40. Raj Pal was working in the post of Photocopier w.e.f. 12.10.1986 in the pay scale of Rs.3050-4590/- in the Central Administrative Tribunal, Chandigarh Bench, Chandigarh. The post of Photocopier is an isolated post. Upon introduction of the ACP Scheme in the year 1999, on completion of twelve years of regular service, Raj Pal was granted the next higher scale in the hierarchy of pay scales i.e. Rs.3200-4590/- vide order dated 12.10.1999. At that point of time, Raj Pal claimed parity with other posts like Hindi Typist/LDC which was also in the equivalent pay scale of Rs.3050-4590/- and had been placed in



the scale of Rs.4000-6000/- on the grant of 1st financial step up on completion of twelve years of regular service. He also claimed that on completion of twenty-four years of regular service in second financial step up, he should be placed in the scale of Rs.5500- 9000/-. In the earlier round of litigation, Raj Pal filed O.A. No.278/CH/2004 claiming the aforesaid parity with posts like Hindi Typist/LDC and the same was allowed by Central Administrative Tribunal by its order dated 30.08.2004 whereby Raj Pal was held entitled to the benefit of higher pay scale under the ACP Scheme of 1999 as applicable for the similar posts i.e. Hindi Typist/LDC. The order dated 30.08.2004 was challenged by Union of India before the High Court in CWP No.7356/CAT of 2005 and the same was dismissed vide order dated 23.05.2007.

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42. Raj Pal filed OA No. 1038/CH/2010 before CAT contending that his pay has been wrongly fixed in PB-1 in the scale of Rs.5200-20200/- with Grade Pay of Rs. 2400/-. He claimed that he was entitled to be fixed in PB-2 in the scale of Rs.9300- 34800/- with Grade Pay of Rs. 4600/-. Raj Pal relied on para (6) of the MACP Scheme as per which in case of employees granted financial upgradations under ACP Scheme till 01.01.2006, their revised pay will be fixed with reference to the pay scale granted to them under ACP. The Tribunal vide its order dated 31.05.2011 noted that it is not disputed that the post held by Raj Pal has been declared equivalent to the post of LDC/Hindi Typist etc. by the Tribunal as well as the High Court in matters of grant of ACP and these pronouncements have attained finality and also stood implemented. The OA was allowed and the appellants were directed to grant second financial upgradation in the promotional hierarchy



in PB-2 in the scale of Rs.9300-34,800/- with Grade Pay of Rs.4,200/- to Raj Pal under the MACP from due date and fix his pay in the hierarchy of posts decided in his case earlier. The appellants filed CWP No.19387 of 2011 before the High Court assailing the aforesaid order. It was inter alia contended by the appellants that the earlier ACP Scheme stood superseded by the MACP scheme and both the schemes cannot run concurrently. The said writ petition was dismissed by the High Court.

43. The above judgment of the High Court was challenged in the Supreme Court by filing SLP (C) No.CC 7467 of 2013. The SLP was filed on 24.12.2011; but some defects were observed by the Court Registry and returned for rectification whereafter the SLP was refiled only on 21.03.2013. The SLP was dismissed by the Hon'ble Chamber Judge vide order dated 15.04.2013 on the ground that sufficient explanation has not been given to condone the delay in refiling the SLP.

44. Insofar as Raj Pal's case is concerned, in view of the dismissal of the earlier writ petition i.e. CWP No.7356/CAT of 2005, Principal Bench of the Tribunal issued letter dated 02.08.2007 directing all the Benches of the Tribunal that the Photocopiers working in the respective Benches may be granted 1st financial upgradation under ACP Scheme in the scale of pay of Rs.4000-6000/- and 2nd financial upgradation in the scale of Rs.5500-9000/-. In Raj Pal's case, taking note of the earlier round of litigation i.e. O.A.No.278/CH/2004 and CWP No.7356/CAT of 2005 and the letter sent by the Principal Bench of the Tribunal dated 02.08.2007 in its order dated 31.05.2011 in O.A. No. 1038/CH/2010, the Tribunal held that Raj Pal having been placed under ACP scheme – second financial upgradation in the scale of Rs.5500-9000/-



is entitled to PB-2 (Rs.9300-34800/- with grade pay of Rs.4200/-).

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47. As noted above, SLP preferred by Union of India against the order dated 19.10.2011 passed by the High Court was dismissed on the ground that the delay in refiling has not been satisfactorily explained. The question which arises for consideration is when the SLP has been dismissed on the ground of delay in filing or of refiling (like in the case of *Raj Pal*), whether it can be taken as a binding precedent on the merits of the case as the “law declared by the Supreme Court within the meaning of Article 141 of the Constitution of India”. *Raj Pal*’s case having been dismissed on the ground that no sufficient cause was shown for the delay in refiling, in our considered view, *Raj Pal*’s case ought not to have been quoted as a precedent of this Court by the High Courts.”

30. The learned Tribunal, while passing impugned order dated 12.09.2022, though noted that petitioner’s counsel had extended consent to grant benefit of provisional promotion to the respondent but did not take into consideration the decision of Supreme Court in *M.B. Mohanan Nair (Supra)*, whereby decision in *Raj Pal’s (Supra)* was directed to be not considered as a precedent.

31. The fact remains that respondent-Ved Prakash was at serial No.1 in the seniority list and Rajpal was at serial No.2 and on the statement made by learned counsel appearing for the petitioner, respondent was provisionally granted benefit of MACP on parity with Rajpal. This Court has already taken note that pursuant to respondent’s retirement on 31.07.2022, his



provisional pension has been fixed on the basis of last pay drawn and no further retiral benefits have been extended to him.

32. In the peculiar facts of the present case, considering that respondent despite being senior to Rajpal has been made to draw less salary than his junior and also that petitioner has retracted from the stand taken by its counsel before the learned Tribunal to fix respondent's provisional pension; and in view of ratio of law laid down by the decision of Supreme Court in ***M.B. Mohanan Nair (Supra)***, the impugned judgment and order dated 12.09.2022 passed in RA No.174/2016; order dated 28.08.2012 passed in OA No.624/2012; the judgment and order dated 09.01.2024 passed in OA No.1078/2023 and the order dated 12.03.2024 passed in C.P. No.210/2024, by learned Tribunal are hereby quashed, with direction to petitioners to refix and release respondent's pension and other benefits within four weeks, however, no recoveries or deductions shall be made in respect of any payments already made.

33. With directions as aforesaid, the present petition and pending application are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

JULY 31, 2024/r