

Ct.No.1 D/L 14 03.11.2025
Saikat
Mukherjee

WP.CT/274/2024

**NANDA KISHORE ROY
VS.
UNION OF INDIA AND ORS.**

Mr. Ujjal Ray, Adv.
Mr. Arpa Chakraborty, Adv.

...For the Petitioner

Mr. Aurobindo Sen, Adv.
Ms. Sumita Sarkar, Adv.

...For the UOI
(Respondent No.1)

1. The subject-matter of the instant writ petition is the order dated 25th July, 2024, as passed by the Central Administrative Tribunal, Kolkata Bench, Kolkata, in O.A. 350/01294/2017 whereby and whereunder the said tribunal rejected the said Original Application basically on the ground of lacks of merit.

2. At the time of hearing, Mr. Ray, learned advocate appearing on behalf of the petitioner at the outset draws the attention of this court to the order impugned. It is submitted by Mr. Ray that while passing the impugned order the said tribunal has failed to visualise the true spirit of the proposition of law as decided in the case of ***Union of India and Others Vs. K.V. Jankiraman and Others***, reported in ***(1991) 4 SCC 109***.

3. It is further submitted by Mr. Ray that from the impugned order it would reveal that the benefit of the Modified Assured Career Progression Scheme ('MACPS' in short) was granted to the writ petitioner on 19th April, 2012

and subsequently thereto, it was recalled on account of submission of the charge-sheet dated 15th May, 2012.

4. It is also submitted by Mr. Ray that in the case of **K.V. Jankiraman (supra)** it has been specifically held that consideration for promotion, selection grade crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceeding against an official and that the sealed cover procedure can be resorted to only after a charge memo is served on the concerned official or the charge-sheet filed before the criminal court and not before.

5. It has been further submitted by Mr. Ray that it is the specific case of the writ petitioner that while considering the MACPS favourably for the petitioner as on 19th April, 2012, there was no pendency of a criminal case and/or even submission of charge-sheet. It is also submitted by Mr. Ray that the tribunal when passing the impugned order has miserably failed to visualise such factum in the light of the reported decision of **K.V. Jankiraman (supra)** which was subsequently followed in the reported decision, **Union of India and Others vs. Doly Loyi**, reported in **2024 SCC OnLine SC 2613**.

6. *Per contra*, Mr. Sen, learned advocate appearing on behalf of the Union of India (Respondent No.1) and its instrumentalities contended that there are sufficient materials to substantiate that there was every justification on behalf of the respondent authorities to withdraw the

MACP benefit on account of pendency of a criminal proceeding against the petitioner.

7. We have meticulously considered the entire materials as placed before us. On careful considerations over the submissions of the learned advocates for the contending parties, it appears that before the tribunal there was no specific pleading on the part of the writ petitioner to substantiate that on the day of consideration of MACPS in favour of the writ petitioner, no charge-sheet was submitted against the writ petitioner and/or there was no pending criminal proceeding against him.

8. No documents have also been filed before the tribunal from the side of the petitioner to substantiate the same. It thus appears to this court that in order to appreciate such factum by the tribunal the writ petitioner before the tribunal ought to have come with proper pleadings. We have noticed lack of pleadings as well as deficiency in filing the documents to substantiate that on the day of consideration of MACPS as on 19th April, 2012 neither any charge-sheet was submitted nor any criminal case was pending.

9. In view of the above discussion, we thought it fit to remand the matter for fresh consideration before the tribunal with a liberty to the writ petitioner to amend his Original Application with a further liberty to produce sufficient documents supported by affidavit within 30 working days from today and in the event, such an application and such documents supported by affidavit are

filed by the petitioner, the same shall have to be accepted by the tribunal.

10. The said tribunal shall grant liberty to the respondent authorities in the said Original Application to file their exception (if any). We also request the tribunal to come to a logical conclusion of the said Original Application after giving due opportunity of hearing to both the parties preferably within 60 working days from the date of submission of documents by the applicant.

11. With the aforementioned observation the instant appeal being WP.CT No.274 of 2024 is disposed of and thereby the order impugned dated 25th July, 2024, as passed in O.A. 350/01294/2017 by the Central Administrative Tribunal, Kolkata Bench, Kolkata, is hereby set aside without expressing our mind and/or opinion on merit and thus all points before the tribunal are kept open.

12. All parties are directed to act on the server copies of this order duly downloaded from the official website of this Court.

2. Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of all necessary formalities.

(SUJOY PAUL, A.C.J.)

(PARTHA SARATHI SEN, J.)