



W.P.No.8790 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2025

CORAM:

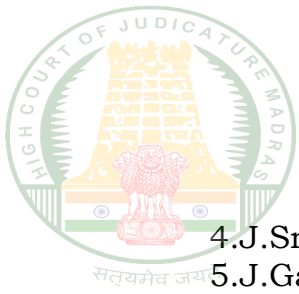
THE HONOURABLE MR. JUSTICE **M.S. RAMESH**
AND
THE HONOURABLE MR. JUSTICE **V.LAKSHMINARAYANAN**

Writ Petition No.8790 of 2025 &
WMP.No.9851 of 2025

- 1.The Union of India,
Rep. by the Secretary,
Ministry of Railways (Railway Board),
Rail Bhawan,
No.1, Raisina Road, New Delhi – 110001.
 - 2.The Union of India,
Rep. by the General Manager,
Southern Railway,
Park Town,
Chennai – 600 003.
 - 3.The Union of India,
Rep. by the Administrative Officer /
Construction & Metropolitan Transport Project (Railways)/
Chennai Egmore, Southern Railway,
No.183, Periyar EVR High Road,
Egmore, Chennai – 600 008.
 - 4.The Union of India,
Rep. by The Chief Personnel Officer,
Southern Railway,
Head quarters Office,
Park Town,
Chennai – 600 003.
- ... Petitioners

Vs.

- 1.G.Jayabal (Deceased)
- 2.J.Nirmala
- 3.J.Ponmalar



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4.J.Sridurga

5.J.Gayathri

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari calling for the records of the Tribunal in its impugned order dated 11.07.2024 in OA.No.1468 of 2014 passed by the Central Administrative Tribunal, Chennai Beach and quash the same.

For Petitioners : Mr.M.Karthikeyan

Respondents : Mr.C.K.Chandrasekhar

ORDER

*(Order of the Court was made by **V.LAKSHMINARAYANAN, J.**)*

We heard Mr.M.Karthikeyan for the petitioners and Mr.C.K.Chandrasekhar for the respondents.

2. The petitioners were the respondents and the first respondent was the applicant before the Central Administrative Tribunal (hereinafter referred to as "CAT").

3. The petitioners seek for the following reliefs:

“calling for the records of the Tribunal in its impugned order dated 11.07.2024 in OA.No.1468 of 2014 passed by the Central Administrative Tribunal, Chennai Beach and quash the same.”

4. For the sake of convenience, the parties are referred to as per



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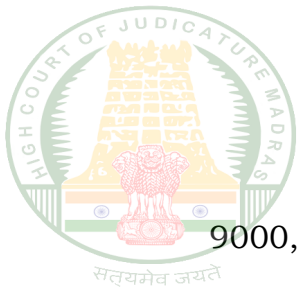
their ranks before the CAT.

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5. The undisputed facts of the case are the deceased original applicant before the CAT was appointed as Head Draftsman on 15.04.1981. He was promoted to the post of Chief Draftsman in February 1988. In 1998, he was promoted to Senior Section Engineer and retired from service on 31.03.2012. The deceased applicant had been awarded II Modified Assured Career Progression Scheme on 01.09.2008. He was eligible for III Modified Assured Career Progression Scheme only on completion of 30 years of service. This would have fallen due on 16.10.2012. However, he had retired from service on 31.03.2012.

6. Modified Assured Career Progression (hereinafter referred to as "MACP") is a scheme introduced, pursuant to the directions of the Railway Board. The scheme grants three financial advancements on completion of 10, 20 and 30 years of regular service. The period is calculated from the date of direct entry into service.

7. While implementing the recommendations of VI Pay Commission, the scale of pay of the deceased applicant was fixed in the revised scale of pay of Rs. 9300-34000, with Grade Pay of Rs.4600/-. The Pay Commission had recommended equivalent grade pays to all the pre-revised scales of pay of Rs.5000-8000, Rs.5500-



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9000, Rs.6000-9800, Rs.6500-11500 and merged them into a single scale of pay of Rs.9300-34800 with identical grade pay of Rs.4800/-.

The applicant pleaded that he was entitled to two financial up-gradation to successive grade pays of Rs.4800/- and Rs.5400/- from 01.01.2006. The third respondent had granted two financial up-gradation to the applicant on 01.09.2008 and 08.07.2010.

8. Subsequently, the third respondent withdrew the said office order and issued another order on 30.03.2011, stating that II MACP had been granted to the applicant without any reference to the I MACP. On account of the implementation of this office order, a sum of Rs.1,35,794/- had been recovered from the salary bills and the Leave Encashment Bill of the applicant by the third respondent. Hence, the original application has been filed, challenging the aforesaid order.

9. The CAT took the application on file and issued notice to the respondents. The respondents also filed their reply. According to them, the applicant had erroneously been granted III MACP, while granting him II MACP with effect from 01.09.2008 vide office order dated 08.07.2010. Reckoning his 20 years of service from 16.10.1982, the applicant was only eligible for II MACP. Thus, the grant of III MACP benefits to the applicant was erroneous and the same was rectified under the impugned order. Consequently, the respondents



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prayed for dismissal of the application.

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10. Pending the original application, the first applicant passed away and his legal heirs were brought on record.

11. The CAT took up the application for disposal. It noticed that the recovery had been effected without a show cause notice. Hence, applying the judgment of the Supreme Court in ***Madhya Pradesh Medical Officers Association v State of Madhya Pradesh, 2022 SCC Online SC 1099***, it allowed the application. Challenging the same, the present writ petition.

12. We have gone through the records and have applied our mind to the facts of the case.

13. It is not in dispute that the order of recovery passed by the third respondent was not preceded with a show cause notice. It is also not in dispute that the original applicant has retired from service and he has also passed away. Any order, which has civil consequences like recovery, can be passed only after strict compliance of principles of natural justice. In the facts of this case, it is clear that the order of recovery was made on the basis of the clarification issued by CPO/MAS on 30.11.2010.



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14. A mere clarification issued by a superior authority cannot be considered as a substitute to the show cause notice. Furthermore, the alleged excess recovery, as pointed out above, was within one year from the date of retirement of the deceased applicant. This very issue had been considered in ***State of Punjab v. Rafiq Masih (White Washer), (2015) 4 SCC 334***. The Supreme Court summarised the principles in the following terms.

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.



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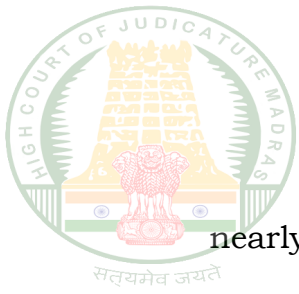
(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

15. The view taken in **White Washer's** case has been reaffirmed by the Supreme Court in **Jagdish Prasad Singh v. State of Bihar, 2024 SCC OnLine SC 1909**.

16. The Supreme Court has pointed out that even if **White Washer's** case does not strictly apply to the facts of the case, the principles laid therein can be adopted in similar circumstances. (See, **Madhya Pradesh Medical Officers Association v. State of Madhya Pradesh and Others, 2022 SCC Online SC 1099**).

17. Apart from the fact that the applicant had retired, we have also taken note of the fact that he has since passed on. In such circumstances, to uphold the order of recovery, in our view, will be iniquitous, harsh and arbitrary. The deceased applicant had rendered



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nearly three decades of service with the respondents. The hardship, that will be caused to the legal heirs, far outweighs the equitable balance of the employer's right to recover. If after a lapse of a decade and more, sending the matter back to the respondents for enquiry would serve no purpose.

18. The CAT has considered all these aspects in the correct perspective and has allowed the application. Consequently, we find no reasons to interfere. The Writ Petition is dismissed. The respondents shall comply with the directions set forth in paragraph No.7 of the order passed in O.A.No.1468 of 2014 dated 11.07.2024 within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

(M.S.R, J.) (V.L.N, J.)
14.07.2025

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

To

The Central Administrative Tribunal, Chennai Beach, Chennai



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**M.S. RAMESH, J.
and
V.LAKSHMINARAYANAN, J.**

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