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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 11.11.2025

\+ W.P.(C) 16028/2023 & CM APPL. 64492/2023

UNION OF INDIA THROUGH THE GENERAL MANAGER & ORS. .....Petitioners

Through: Mr.Himanshu Pathak, Adv.

versus

SH AZIZ MOHD KHAN ABBASI .....Respondent

Through: Mr.Naushad Ahmed Khan and Ms.Archana Chaudhary, Advs. (through VC)

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE MADHU JAIN

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioners, challenging the Order dated 18.08.2022 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal') in O.A. No.2747/2015, titled ***Sh. Aziz Mohd. Khan Abbasi v. Union of India & Ors.***, whereby the learned Tribunal allowed the O.A. filed by the respondent herein with the following directions:

> *"10. In light of the facts and circumstances and the arguments detailed above, we are of the considered view that the impugned order cannot be sustained and accordingly, it is set aside. The respondents are directed to restore the position as it existed in terms of the pay scale and grade pay of the applicant on 01.09.2008. The recovery made pursuant to*

> *the impugned order shall be refunded to the applicant and the aforesaid directions shall be complied with within a period of twelve weeks from the date of this order. The retirement benefits, including the leave encashment, gratuity, pension and all other retiral benefits, shall be redetermined and recalculated, pursuant to this Order and paid to the applicant along with arrears within this period of twelve weeks from weeks from the date of this order. However, we are not passing any orders with respect to payment of interest on such arrears."*

2. To give a brief background of the facts in which the present petition arises, the respondent was appointed as a Junior Clerk in the Railway Department on 25.02.1982 in the Pay Scale of Rs.260-400, with a Grade Pay of Rs.1900/- under the 6th Central Pay Commission (CPC). He was subsequently promoted as a Senior Clerk in the Pay Scale of Rs.330-560 (revised Grade Pay of Rs.2800/- under the 6th CPC) through a Limited Departmental Competitive Examination (LDCE) against 13⅓ % of the posts of Senior Clerks earmarked to be filled from amongst in-service graduate clerks. As per the Railway Board's Cadre Restructuring Instructions No. III/87/UPG/7 dated No. 18.06.1981 PC- and 31.07.1981, 20% of the posts of Senior Clerks were to be filled through direct recruitment, 13⅓ % by promotion through LDCE from amongst in-service graduate clerks, and the remaining posts on the basis of seniority-cum-suitability from the Junior Clerks grade.

3. The respondent was thereafter promoted to the post of ARI in the Pay Scale of Rs.1400-2300 (revised to Rs.5000-8000/-), and

subsequently to the post of CMI in the Pay Scale of Rs.1600-2600 on 06.09.1991 and 01.01.1996, respectively. He was later promoted as Senior CMI in the Pay Scale of Rs.6500-10500 on 05.02.1998.

4. The Modified Assured Career Progression Scheme (MACPs) was introduced by the Railway Board *vide* Circular RBE No.101/2009 dated 10.06.2009. The respondent was granted the benefit of 3rd MACP with effect from 01.09.2008, whereby his Grade Pay was upgraded from Rs. 4600/- to Rs. 4800/-.

5. The respondent continued to draw the enhanced Grade Pay till 31.07.2015, that is, the date of his superannuation. However, only two weeks prior to his retirement, that is, on 16.07.2015, the petitioners issued an Order withdrawing the benefit of the 3rd financial upgradation under the MACP Scheme with effect from 01.09.2008, and revising the respondent's pay by reducing his Grade Pay to Rs. 4600/-. The alleged excess amount was also recovered from the retiral benefits of the respondent.

6. Aggrieved of the above, the respondent challenged the said action before the learned Tribunal.

7. The learned Tribunal, placing reliance on the Judgment of this Court in ***Union of India & Ors. v. Brahm Prakash***, 2017:DHC:4497-DB, allowed the respondent's claim, holding that the appointment of the respondent as Senior Clerk through LDCE could not be treated as a promotion for the purposes of the MACP Scheme. The petitioners were, therefore, directed to restore the respondent's Pay Scale and Grade Pay and to re-determine his retiral benefits accordingly. The

learned Tribunal also directed the petitioners to refund the amount recovered from the respondent's retiral benefits.

8. The learned counsel for the petitioners, placing reliance on the Judgment of the Supreme Court in ***Union of India & Ors. v. Brahm Prakash*** (Civil Appeal Nos. 2852-2853/2024, decided on 21.02.2024), submits that the promotion of the respondent to the post of Senior Clerk, *albeit* through LDCE, has to be counted for the purposes of granting MACP benefit and, therefore, the respondent was not entitled to the 3rd financial upgradation.

9. On the other hand, the learned counsel for the respondent submits that the respondent was appointed as a direct recruit to the post of Senior Clerk and, therefore, in terms of the Clarification No.PC-V/2009/ACP/2 dated 12.09.2012, the same is not to be counted for the purposes of the MACP Scheme. He further submits that, in any case, the recovery initiated just two weeks prior to the date of the superannuation of the respondent has rightly been interdicted by the learned Tribunal, and the petitioners have been correctly directed to refund the amount recovered from the retiral benefits of the respondent.

10. We have considered the submissions made by the learned counsels for the parties.

11. In the present case, as is evident from the narration of the facts given hereinabove, the respondent was appointed as a Senior Clerk against a 13⅓ % quota earmarked for in-service graduate clerks for the post of Senior Clerk. Therefore, the Clarification No.PC-

V/2009/ACP/2 dated 12.09.2012 shall have no application to the facts of the present case.

12. In terms of the Judgment of the Supreme Court in ***Brahm Prakash*** (supra), the said promotion is to be counted for the purposes of availing benefits under the MACP Scheme.

13. The learned Tribunal, having placed reliance on the Judgment of this Court, which was subsequently set aside by the Supreme Court in the above-referred Judgment, has thus committed an error. Accordingly, the Impugned Order, insofar as it holds that the said promotion is not to be counted for the purposes of the MACP Scheme, is liable to be set aside.

14. Coming to the submission of the respondent that the petitioners should not be permitted to retain the recovery of the excess amount paid and recovered through withholding of the retiral benefits, we find merit in the said submission of the respondent.

15. It is undisputed that the respondent had been granted the benefit of the 3rd MACP with effect from 01.09.2008, which he continued to receive until his last drawn pay as on 30.06.2015. It was only two weeks prior to his superannuation that, by a notice dated 16.07.2015, not only was this benefit withdrawn, but recovery of the alleged excess amount paid to him was also initiated.

16. In ***State of Punjab & Ors. v. Rafiq Masih (White Washer) & Ors.,*** (2015) 4 SCC 334, the Supreme Court considered the case where such recovery ought not to be allowed to be made and gave illustrative circumstances as under:

> *"**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:*
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> *XXX*
>
> *(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 employers, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
>
> *……. ."*

17. In the present case, as the excess amount had been paid to the respondent for more than seven years prior to his retirement, and was sought to be recovered only two weeks prior to his retirement, we are of the view that, applying the ratio laid down by the Supreme Court in ***Rafiq Masih (White Washer) & Ors.*** (supra), such recovery cannot be sustained.

18. Accordingly, the petitioners are directed to refund any amount recovered from the respondent from his retiral benefits or otherwise, on account of overpayment arising from the grant of the 3rd MACP benefit or otherwise. Such refund, if not already made in terms of the Judgment of the learned Tribunal, shall be made by the petitioners within a period of twelve weeks from today, along with interest at the rate of 6% per annum.

19. The petition, along with the pending application(s), is disposed of in the above terms.

20. There shall be no orders as to costs.

NAVIN CHAWLA, J

MADHU JAIN, J

NOVEMBER 11, 2025/ns/DG