(2023) 03 CAT CK 0028

In the Central Administrative Tribunal

Case No : Original Application No. 1322 Of 2019

Shyam Nandan Singh & Ors APPELLANT

Vs

Union Of India & Ors RESPONDENT

Date of Decision : 13-03-2023

Acts Referred:
Administrative Tribunals Act, 1985 — Section 19

Citation : (2023) 03 CAT CK 0028

Hon'ble Judges : Om Prakash VII, Member (J);Dr. Sanjiv Kumar, Member (A)

Bench : Division Bench

Advocate : Jaswant Singh, Bablu Singh

Final Decision : Dismissed

Judgement

Om Prakash VII, Member (J)

1. The present O.A. has been filed by the applicants under Section 19 of the AT Act, 1985 with the prayer for directing the respondents to allow the applicant to draw the grade pay of Rs. 4600/- as per orders of Hon'ble Tribunal as well as High Court and also in respect of their juniors which is allowed to them. It is further prayed that direction may be issued to refund the amount deducted from the salary of the applicant with interest @ 18% .

2. The brief facts of the case as per the applicants are that applicants had entered into the service as Good Guards in the initial scale of Rs. 2800/- and have been working since long in the cadre of Guards in East Central Railway. It is stated that after the MACP was framed and adopted by the Railways, the applicants were extended the benefit of financial upgradation to the grade pay of Rs. 4600/- (from Rs. 4200) vide Establishment order No.352 of 2010 dated 10.6.2010 along with other employees. It is further stated that Railway Board issued a letter dated 10.2.2011 (Annexure No.A-6), clarifying inter-alia that in terms of para 8 of the Board's letter dated 10.6.2009 on the subject of MACP, the promotion from Senior Goods Guards to Passenger Guard should be counted for

the purpose of MACPs, whereas in terms of para 5 of the said letter, the promotion from Passenger Guard to Senior Passenger Guard should be ignored for MACP, since the category of passenger guard (5000-8000) and Senior Passenger Guards (5500-9000) had been merged and allotted grade pay of Rs. 4200/-On the basis of this reasoning, an employee appointed as Goods Guard would have earned the following three promotions/financial upgradations till he reached the position of Mail/Express guard, viz:-

i) From Goods Guards to Senior Goods Guard

ii) From Senior Goods Guard to Passenger Guard.

iii) From senior Passenger Guard to Mail Express Guard (Passenger Guard to Senior Passenger Guard to be ignored).

It is also mentioned in this letter that such employees are not entitled for any further financial upgradaiton under MACP scheme. Based upon the aforesaid letter dated 10.2.2011, the General Manager (Personnel), East Central Railway, Hazipur issued letter dated 21.2.2011 (Annexure A-7), directing that if any action contrary to the letter dated 10.2.2011 had been taken, the same should be rectified under intimation to his office. In compliance of the aforesaid letter dated 10.2.2011 and letter dated 21.2.2011, vide order dated 20.5.2011 (Annexure No. A-8), respondents have cancelled the earlier orders granting the benefit under MACP to the applicants and refix their pay. Being aggrieved from the order dated 20.5.2011, some of the similarly situated persons have filed O.A. No. 1241/2011 before this Tribunal which was allowed vide order dated 24th September, 2012 considering the judgment passed by Ernakulam Bench in O.A. No. 484/2011, 507/02011, 561 of 2011, 610/2011, 647/2011 and 650 of 2011 decided on 22.2.2012, holding that the grant of benefit under MACP to the applicants was in order and the cancellation of the benefit granted to them and subsequent recovery affected of excess amount is illegal and unsustainable. Aggrieved by the order dated 24th September, 2012 passed in O.A. No. 1241/2011, respondents have filed writ petition A No. 18244 of 2013, which was dismissed by the Hon’ble High Court vide order dated 19.7.2013. Railway Administration approached the Hon’ble Apex Court by filing SLP to Appeal (C) No. 13421/2014, against the order dated 19.7.2013 passed by the High Court, which was dismissed vide order dated 29.8.2014. Review Petition (Civil) No. 1303 /2015 was also dismissed vide order dated 6.5.2015. Thereafter, respondents have complied with the order and granted the benefit of MACP to the applicants of O.A.No. 1241 of 2011 but the benefit was not extended to the applicants. Applicants are seeking the benefit of judgment passed by the Tribunal in O.A. NO. 1241 of 2011 which was affirmed by the Hon’ble High Court and Hon’ble Supreme Court.

3. Learned counsel for the respondents have filed counter reply, stating therein that channel of promotion of Goods Guard is as under:-

i) Goods Guards to Senior Goods Guard

ii) Senior Goods Guard to Passenger Guard/Sr. Passenger Guard

iii) Passenger Guard/Senior Passenger Guard to Mail Express Guard (Passenger Guard to Senior Passenger Guard to be ignored).

It is further stated that at the time of commencement of MACP, applicants were getting the pay scale of Rs.9300-34800 with grade pay of Rs. 4200/- and also promoted upto the post of Mail/Express Guard prior to commencement of MACP scheme. Meaning thereby the applicants had granted 4 financial upgradations during his service, as such they were not entitled for any further financial upgradation. However, under misconception of para 5 and 8 of the MACP dated 10.6.2009, grade pay of the applicant was raised to Rs. 4600/- (w.e.f. 1.9.2008) and Rs. 4800/- (w.e.f. 6.2.2010) vide order dated 10.6.2010. On receipt of the clarification dated 10.2.2011, vide order dated 20.5.2011, the benefit of MACP was withdrawn. However, in compliance of CAT order, which was affirmed by the Hon'ble High Court as well as by the Hon'ble Apex Court, respondents have again given the benefit of MACP to the applicants of O.A. No. 1241/2011 only. It is further stated that applicant was removed from service vide order dated 20.3.2012 and in compliance of the order of Hon'ble Supreme Court, competent authority vide order dated 22.9.2017 converted the removal of the applicant into compulsory retirement.

4. Heard the learned counsel for the parties.

5. Learned counsel for the applicants argued that vide order dated 10.6.2010, applicants along with other similarly placed employees were granted the benefit of financial upgradation to the grade pay of Rs. 4600/- (from Rs. 4200) which was later on withdrawn by the respondents vide letter dated 20.5.2011 in compliance of the clarification issued by the Railway Board vide letter dated 10.2.2011. Some of the similarly situated employees have approached the CAT, Earnakulam Bench and CAT, Allahabad Bench, and Hon'ble CAT , Allahabad Bench considering the judgment passed by CAT, Earnakulam Bench, allowed the O.A.No. 1241/2011 vide judgment dated 24th September, 2012, which was challenged before the Hon'ble High Court and Hon'ble High Court affirmed the judgment passed by CAT, Allahabad Bench. Respondents approached the Hon'ble Supreme Court, which was dismissed by the Hon'ble Supreme Court. Hence the order passed by CAT, Allahabad Bench has attained finality. Since the applicants are similarly situated employee, they are also entitled for the benefit of MACP.

6. Learned counsel for the respondents has argued that MACP benefit granted to the applicants was withdrawn in compliance of the RBE letter dated 10.2.2011 and GMP letter dated 21.2.2011. It is further submitted that at the time of commencement of MACP scheme dated 10.6.2009, the applicants were getting the pay scale of Rs. 9300-34800 with grade pay of Rs. 4200/- and also promoted upto the post of Mail/Express Guard. Meaning thereby, the applicants had been granted 4 financial upgradution during his service. However, in compliance of the CAT order, which was affirmed by the Hon'ble High Court as well as by the

Hon’ble Supreme Court, the same was again restored in respect of the applicants who were applicants of that O.A. Since the applicants were not party in that O.A., hence the benefit was not granted to them. Learned counsel for the respondents has placed reliance of the judgment passed by the three judges Bench of Hon’ble Apex Court in the case of Union of India and others Vs. M.V.Mohanan Nair Civil Appeal No. 2016 of 2020 (arising out of SLP © No. 21803 of 2014 decided on 5th March, 2020. Learned counsel for respondents has also filed written submission, by which he has reiterated the facts as stated in the Counter Reply.

7. We have considered the rival submissions of the parties and perused the entire pleadings.

8. It is evident from the record, that vide order dated 10.6.2010, applicants along with similarly situated employees have been granted MACP in the grade pay of Rs. 4600/- from grade pay of Rs. 4200/- depending upon their entitlement and based upon their length of service. However after clarification of Railway board vide letter dated 10.2.2011, the same was cancelled vide impugned order dated 20.5.2011. Some of the aggrieved employees have approached CAT, Earnakulam Bench and CAT, Allahabad Bench and Tribunal allowed the O.A. holding that the grant of benefit under MACP to the applicants was in order and the cancellation of the benefit granted to them and subsequent recovery affected of excess amount is illegal and unsustainable. Respondents were directed to restore the financial upgradation granted to the applicants and any recovery made in this behalf also be refunded. The judgment passed by CAT , was also affirmed by the Hon’ble High Court as well as by the Hon’ble Supreme Court and respondents have complied the order of CAT and restored the benefit of MACP in respect of the applicants who were party in that O.A. only and not extended the benefit to the applicant.

9. In the case of Union of India and others Vs. M.V. Mohanan Nair (supra), Apex Court has raised three questions:-

(i) Whether MACP scheme entitles financial upgradation of pay to the next grade pay or to the grade pay of the next promotional post as envisaged under the ACP scheme? Whether MACP Scheme envisages grant of financial upgradation in Grade Pay Hierarchy and not in promotional hierarchy?

(ii) As contended by the respondents, whether MACP scheme is disadvantageous to the employees in comparison to ACP scheme as long as the financial upgradation is granted in hierarchy of grade pay under MACP scheme?

(iii) Whether respondents are entitled to stepping up of their grade pay to be at par with grade pay of their juniors who were getting the higher grade pay on account of implementation of MACP Scheme?

Para 29, 51, 52 and 53 of the judgment of Union of India and others Vs. M.V. Mohanan Nair (supra) are quoted below:-

“29. The change in policy brought about by supersession of ACP Scheme with the

MACP Scheme is after consideration of all the disparities and the representations of the employees. The Sixth Central Pay Commission is an expert body which has comprehensively examined all the issues and the representations as also the issue of stagnation and at the same time to promote efficiency in the functioning of the departments. MACP Scheme has been introduced on the recommendation of the Sixth Central Pay Commission which has been accepted by the Government of India. After accepting the recommendation of the Sixth Central Pay Commission, the ACP Scheme was withdrawn and the same was superseded by the MACP Scheme with effect from 01.09.2008. This is not some random exercise which is unilaterally done by the Government, rather, it is based on the opinion of the expert body – Sixth Central Pay Commission which has examined all the issues, various representations and disparities. Before making the recommendation for the Pay Scale/Revised Pay Scale, the Pay Commission takes into consideration the existing pay structure, the representations of the government servants and various other factors after which the recommendations are made. When the expert body like Pay Commission has comprehensively examined all the issues and representations and also took note of inter-departmental disparities owing to varying promotional hierarchies, the court should not interfere with the recommendations of the expert body. When the government has accepted the recommendation of the Pay Commission and has also implemented those, any interference by the court would have a serious impact on the public exchequer."

"51. The ACP Scheme which is now superseded by MACP Scheme is a matter of government policy. Interference with the recommendations of the expert body like Pay Commission and its recommendations for the MACP, would have serious impact on the public exchequer. The recommendations of the Pay Commission for MACP Scheme has been accepted by the Government and implemented. There is nothing to show that the Scheme is arbitrary or unjust warranting interference. Without considering the advantages in the MACP Scheme, the High Courts erred in interfering with the government's policy in accepting the recommendations of the Sixth Central Pay Commission by simply placing reliance upon Raj Pal's case. The impugned orders cannot be sustained and are liable to be set aside.

52. In the result, all the impugned orders in these batch of appeals arising out of SLP(C) No.21803 of 2014, SLP(C) No.22181 of 2014, SLP(C) No.23335 of 2014, SLP(C) No.23333 of 2014, SLP(C) No.18227 of 2015, SLP(C) No.31125 of 2016 and SLP(C) Diary No.6042 of 2017 are set aside and the appeals preferred by the Union of India are allowed. Consequently, appeal arising out of SLP(C)No.33706 of 2016 is disposed of. No costs.

53. However, as pointed out earlier in para Nos. (47), (48) and (49), since certain anomalies on implementation of the MACP Scheme have been brought to the notice of the Joint Committee in the various meetings of the Joint Committee, Union of India and DoP&T to consider the same as they deem it appropriate and take a decision in accordance with law."

10. Three judges bench of Hon'ble Supreme Court in the case of Union of India and others Vs. M.V. Mohanan Nair (supra) had clearly observed that parity of Raj Pal case cannot be given to others because without considering the advantages in the MACP scheme, the High Courts erred in interfering with the government's policy in accepting the recommendations of the sixth Central Pay Commission by simply placing reliance upon Raj Pal's case. The impugned orders cannot be sustained and are liable to be set aside. As per ratio laid down in Union of India and others Vs. M.V. Mohanan Nair (supra) case MACP scheme has been implemented replacing ACP scheme, then the prayer made by the applicants in the instant O.A. is not liable to be allowed and O.A. is liable to be dismissed.

11. Accordingly, O.A. is dismissed as far as prayer for restoring the benefit of MACP earlier granted to the applicants are concerned. As far as, recovery is concerned, since the applicants have not committed any fraud or misrepresentation in getting the MACP, recovering an amount from the retiral dues of the applicant is not justifiable. Accordingly, respondents are directed to refund the amount, recovered from the applicant and further recovery shall not be made.

12. There shall be no costs.

