

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Civil Contempt Petition No. 203/00079/2016
(in OA 69/2013)

Jabalpur, this Tuesday, the 23rd day of January, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

1. Valkar Balwant S/o Late V. Balaraj,
Aged about 48 years, R/o Matra Chaya,
Kundru Badi, Behind Kashyap Colony,
PS-City Kotwali, Bilaspur-Chhattisgarh-495001
2. Sanjay Singh S/o Shri P.N.Singh,
Aged about 42 years, R/o CYM, SECR Guard,
PS-Torwa, Bilaspur, Chhattisgarh, 495001

-Petitioners

(By Advocate –**Shri A.V.Shridhar**)

V e r s u s

R. Ganesh Senior Divisional Personnel Officer,
South East Central Railway, Bilaspur,
Chhattisgarh-495004

- Respondent

(By Advocate –**Shri R.N.Pusty**)

(Date of reserving the order:- 09.11.2017)

O R D E R

By Ramesh Singh Thakur, JM:-

This Petition has been filed by the petitioners against the inaction of the authorities for extending the benefits of MACP Scheme in willful compliance of the order passed by this Tribunal in Original Application No. 69/2013 dated 10.03.2016.

2. The main contention of the petitioners is that the Tribunal vide order dated 14.05.2015 in Original Application No. 69/2013, which is annexed as CP/2 has allowed the petition, the operative portion of the order is as under:

“(4) Therefore, we hold that applicant is entitled to the benefits as provided in the earlier Original Application which will “be made applicable to the applicant within next two months but subject as aforesaid.”

3. It was further submitted that the respondent department has preferred a Writ Petition (S) No. 3854/2015 before the Hon'ble High Court of Chhattisgarh at Bilaspur on various grounds and the Hon'ble High Court has remanded the case to the Tribunal, a copy of which is annexed as CP/3, the operative portion of which is as under:

“(5). The order of the Tribunal in its present form is therefore held to suffer from serious infirmity of decision making process. The Tribunal has statutory powers and not plenary powers like vested in the High Court under Article 226 of the Constitution. A statutory order therefore must comply the purpose for which the power is vested.

(6). The order dated 14.5.2015 is set aside and the matter is remanded to the Tribunal for passing fresh appropriate orders in light of the aforesaid discussions and in accordance with law.

(7). We have purposely refrained from noticing the facts of the case and it shall be open for the parties to place all relevant materials as they may consider necessary before the Tribunal itself.”

4. Thereafter the Original Application No.69/2013 was placed before the Tribunal for consideration afresh and the Tribunal vide

order dated 10.03.2016 gave a positive finding of law to the effect that the movement of Senior Goods Guard to the position of a passenger guards to be considered as a lateral entry and not as a promotion. The Tribunal has granted liberty to the applicants to file individual representation for grant of MACP benefits and directed the respondents to decide the claim keeping in view the judicial verdicts (Order passed by the Hon'ble High Court of Allahabad in Writ Petition (A) No. 18244/2013 dated 19.07.2013 and order passed by the Hon'ble Supreme Court of India in SLP No. 13421/2014 dated 29.08.2014), a copy of the order dated 10.03.2016 is annexed as CP/4. The applicants filed Writ Petition No. 1234/2016 before the Hon'ble High Court of Chhattisgarh at Bilaspur on the ground that the grant of MACP benefits to the Railway guards is no longer res-integra, the Tribunal ought to have given a positive direction rather than directing the applicants to file individual representations. The said Writ Petition was disposed of by the Hon'ble High Court of Chhattisgarh on 27.04.2016, a copy of which is annexed as Annexure CP/5. It is further submitted by the petitioners that in compliance of the order passed by the Tribunal the individual representations were put forth before the respondents for entitlement of MACP benefits. Now vide order dated 26.07.2016, the respondents have willfully violated the

submissions made before the Tribunal in relation to order passed by the Tribunal.

5. The petitioners submitted that the respondents have reopened the same issue with regard to the eligibility of the petitioners for entitlement of the MACP benefits and the respondent department has mischievously, willfully flouted the order passed by the Hon'ble Tribunal and thus has rendered himself liable to be proceeded under the Contempt Proceedings.

6. The respondent has filed their reply. The respondent at the outset, submitted that the answering respondents has the highest regards for the order passed by the Tribunal and has full faith in the judicial system and has always shown respect and honour towards it in the true letter and spirit and the answering respondents if for any reasons is found to be ignored/violated the order of the Tribunal, then the answering respondents tenders his unconditional apology and hence seeks leave of this Tribunal to explain the bona-fide belief upon which the answering respondents has acted.

7. It has been specifically denied by the answering respondents for any inaction on the part of the respondents. It has been submitted that the order dated 26.07.2016 is strictly in compliance of the order passed by the Tribunal in Original Application No. 69/2013 and the answering respondents has taken a decision in the

time stipulated by the Tribunal and has passed a speaking order, keeping the judicial verdicts in mind and in the light of the scheme of the MACP as modified from time to time. There was no direction issued by the Tribunal to decide the representation in any particular manner.

8. It has been further submitted by the replying respondents that vide order dated 14.05.2015 (Annexure CP/2), this Tribunal decided the Original Application relying upon an order passed in an identical manner in O.A. No. 939/2011 titled as **West Central Railway, Jabalpur, K. Bhaskaran vs. Union of India and others**. In the said Original Application the benefits of MACP granted to the applicant were sought to be withdrawn by West Central Railway which was under challenge. The Central Administrative Tribunal Bench at Jabalpur had directed the respondents to reconsider the matter and decide about the applicability of MACP in the case of the applicant within a period of three months. It is further submitted that the order passed in Original Application No. 939 of 2011 was challenged by the West Central Railway, Jabalpur in Writ Petition No. 13031/2013 before the Hon'ble High Court of Madhya Pradesh at Jabalpur and vide order dated 20.11.2015, the Hon'ble High Court had dismissed the case of Railways and confirmed the order of the Tribunal on the

ground of judgment/order passed by the Hon'ble High Court of Allahabad in Writ Petition (A) No. 18244/2013 dated 19.07.2017 and further order on appeal of Railway in SLP No. 13421/2014, which has been dismissed by the Hon'ble Apex Court vide order dated 29.08.2014.

9. It has been further submitted by the respondents that the management of SECR, Bilaspur had filed Writ Petition (S) bearing No. 3854/2015 before the Hon'ble High Court of Chhattisgarh and challenged the order of Tribunal as passed in O.A. No. 69 of 2013 and the Hon'ble High Court of Chhattisgarh vide order dated 02.11.2015 (Annexure CP/3) was pleased to allow the Writ Petition and set aside the order dated 14.05.2015 of Tribunal and the matter was remanded to the Tribunal for passing fresh appropriate orders to its satisfaction as it may deem fit, in accordance with the law. Thereafter the Hon'ble Tribunal, Jabalpur Bench vide order dated 10.03.2016 (Annexure CP/4) had decided the matter by passing a fresh order and dispose of the O.A. by quoting the judgment passed by the Hon'ble High Court of Allahabad in Writ Petition (A) No. 18244/13 dated 19.07.2013 and passed the following orders:

“(8) In view of this settled position, and without going into the other averments made by the parties in their pleadings and during the course of arguments made by the learned counsel for the parties, we consider it appropriate to direct the respondents to decide the claim of the applicants for financial upgradation in terms of the MACP scheme,

keeping these judicial verdicts in mind and dispose of their representations accordingly. The applicants are at liberty to make individual representation to the authorities concerned for the grant of MACP benefits to them within a period of 15 days from the date of receipt of a copy of this order. On the receipt of such representations, the concerned authorities are directed to consider and decide them with reasoned and speaking orders, within a period of three months from the date of receipt of such representations. Needless to say that orders so passed by the concerned authorities shall be communicated to the applicants immediately thereafter.”

10. The applicants were not satisfied with the judgments of the learned Tribunal, and they had approached the Hon’ble High Court of Chhattisgarh at Bilaspur vide Writ Petition (S) No. 1234/2016 with a contention that the issue raised before the learned Tribunal is no longer res-integra and the matter has reached finality with dismissal of SLP by the Hon’ble Supreme Court and the Hon’ble Tribunal ought to have directed the respondent to grant benefits of MACP to the petitioners rather than directing the petitioners to make representation and further directing the respondents to decide the representation in view of the various judicial pronouncements. The matter has been disposed of by the Hon’ble High Court of Chhattisgarh at Bilaspur vide order dated 27.04.2016 with the following observations which is as under:-

“Upon consideration of the submission of the parties, we find no reason to interfere with the order of Tribunal directing representation to be filed, but reiterate the time period directions for disposal as contained in the same.”

11. So the replying respondents has submitted that they have considered the case of the petitioners on the basis of judgment and order passed in O.A. No. 69 of 2013 dated 10.03.2016 passed by the Tribunal and the said representation have been examined individually and decided with a reasoned and speaking order.

12. The further submissions of the replying respondent is that, the SLP No. 13421 of 2014 which was dismissed by the Hon'ble Apex Court, the Ministry of Railway has preferred Review Petition Civil bearing No. 1303 of 2015 before the Hon'ble Apex Court in the matters of **Union of India and others vs. Sacchidanand Ram and others**, which is still pending before the Hon'ble Apex Court. So the Contempt Petition is liable to be dismissed as the representation of the applicant granting MACP has been decided by the replying respondents with a detailed reasoned and speaking order keeping in mind all the rules and guidelines issued by the Ministry of Railways as well as by the Head Quarters time to time and also discussed the Judicial Verdicts in speaking order and nothing is done intentionally or willfully against the petitioners.

13. We have heard the learned counsel for the parties, and gone through the various annexures annexed with the petition.

14. It is clear that the Original Application No. 69/2013 has been filed by all the petitioners and the Tribunal vide order dated

14.05.2015 (Annexure CP/2) has allowed the Original Application.

The operative portion of the order is as under:-

“(4). Therefore we hold that applicant is entitled to the benefits as provided in the earlier Original Application which will be made applicable to the applicant within next two months but subject as aforesaid.

(5). Thus the Original Application is allowed. No costs.

(6). Registry is directed to enclose all of the applicants' name along with this order itself so that it will be a consolidated one.”

15. Against the order of the Tribunal, the respondent department had filed the Writ Petition No. 3854/2015 before the Hon'ble High Court of Chhattisgarh at Bilaspur and Hon'ble High Court was pleased to set aside the order passed by the Tribunal vide order dated 02.11.2015 (Annexure CP/3) and the matter was remanded back to the Tribunal. The operative portion of the order is as under:-

“(5). The order of the Tribunal in its present form is therefore held to suffer from serious infirmity of decision making process. The Tribunal has statutory powers and not plenary powers like vested in the High Court under Article 226 of the Constitution. A statutory order therefore must comply the purpose for which the power is vested.

(6). The order dated 14.5.2015 is set aside and the matter is remanded to the Tribunal for passing fresh appropriate orders in light of the aforesaid discussions and in accordance with law.

(7). We have purposely refrained from noticing the facts of the case and it shall be open for the parties to place all

relevant materials as they may consider necessary before the Tribunal itself.”

(8). It is expected that the Tribunal will endeavour to pass such fresh appropriate orders to its satisfaction as it may deem fit, in accordance with the law within a maximum period of four months from the date of receipt and/or production of copy of this order.

(9). The Writ Petition is allowed.”

16. The Tribunal vide order dated 10.03.2016 in Original Application No. 69/2013 has again decided the Original Application vide Annexure CP/4 and the respondent department was directed to consider and decide the representation with a reasoned and speaking order within a period of three months, the relevant portion of the judgment is as under:-

“(6). The Hon’ble Allahabad High Court in its judgment in Writ Petition (A) No.18244/2013 dated 19.07.2013 has held as under:-

“Since it has already been held by judicial pronouncement that the post of Senior Goods Guard and Passenger Guard have the same grade of pay and movement of a Senior Goods Guard to the post of Passenger Guard, is only a lateral induction and not a promotion, all the private respondents would be taken to have got only one financial upgradation and as per MACPS, they were entitled to two more financial upgradations. This is exactly what has been held by the Ernakulam Bench of the Central Administrative Tribunal in a batch of original applications, which was relied upon by the Tribunal in the impugned judgment.

For the reasons stated above, we find no justification to interfere with the impugned order of the Tribunal. The writ petition is accordingly dismissed.”

The said judgment of Hon'ble Allahabad High Court has also been confirmed by the Hon'ble Supreme Court in their judgment dated 29.08.2014 in SLP No.13421/2014.

(7). In view of the above, it is quite clear that the movement of a Senior Goods Guard to the position of a Passenger Guard is to be considered as a lateral entry and not as a promotion.

(8). In view of this settled position, and without going into the other averments made by the parties in their pleadings and during the course of argument made by the learned counsel for the parties, we consider it appropriate to direct the respondents to decide the claim of the applicants for financial upgradation in terms of the MACP scheme, keeping these judicial verdicts in mind and dispose of their representations accordingly. The applicants are at liberty to make individual representations to the authorities concerned for the grant of MACP benefits to them within a period of 15 days from the date of receipt of a copy of this order. On the receipt of such representations, the concerned authorities are directed to consider and decide them with reasoned and speaking orders, within a period of three months from the date of receipt of such representations. Needless to say that orders so passed by the concerned authorities shall be communicated to the applicants immediately thereafter.”

17. Against the order dated 10.03.2016 passed by the Tribunal the applicants had filed the Writ Petition No. 1234/2016 and the said Writ Petition has been dismissed by the Hon'ble High Court of Chhattisgarh at Bilaspur on 27.04.2016 which is annexed as Annexure CP-5.

18. Finally the respondent department, after considering the representation filed by the applicants, the respondent had decided their representation dated 26.07.2016 vide Annexure CP/1 and detail reasons has been given in the said annexure.

19. The main contention of the applicants are that the Tribunal vide order dated 10.03.2016 has passed the order and whereby the respondents were directed to decide the representation of the applicants and as the matter has been finally settled in SLP No. 13421/14 whereby the Hon'ble Supreme Court has affirmed the judgment passed by the Hon'ble Allahabad High Court and the reasons has been given by the Tribunal in Para 6 of the order passed by the Tribunal in Annexure CP/4.

20. On the other side, the respondents submitted that the Tribunal has not directed the respondents to decide the matter in particular manner. The respondents has decided the matter and only direction for respondents as contained in Para 8 of the Annexure CP/4 to decide the claim of the petitioners for the financial upgradation in terms of the MACP Scheme, keeping these judicial verdicts in mind and dispose of their representations accordingly. It is pertinent to mention that against this order dated 10.03.2016 (Annexure CP/4), the petitioners had preferred a Writ Petition No. 1234/2016 before the Hon'ble High Court of Chhattisgarh at Bilaspur and the applicant has sought for the reliefs which is annexed with the reply of the respondents as Annexure R-1. The relevant portion of relief sought is as under:

“(10.1) That, this Hon'ble Court may kindly be pleased to issue a appropriate writ/order/direction thereby quashing the

order dated 10.03.2016 to the extent it directs the petitioners to make individual representations.

(10.2) That, this Hon'ble Court may kindly be pleased to hold that petitioners are entitled for benefits of MACP in light of various judicial pronouncements.

(10.3) Any other relief in the facts and circumstances of the case which the Hon'ble Court deems fit and proper may be passed.”

21. But the Hon'ble High Court of Chhattisgarh at Bilaspur has dismissed the Writ Petition No. 1234/2016 on 27.04.2016 which is annexed as Annexure CP/5. The operative portion is as under:-

“Upon consideration of the submissions of the parties, we find no reasons to interfere with the order of Tribunal directing representations to be filed, but reiterate the time period directions for disposal as contained in the same.”

So the other reliefs claimed by the applicants regarding the relief as mentioned in Annexure R/1 have been turned down.

22. It is pertinent to mention that in clause 10.2 of relief the applicants has sought for the direction of this Hon'ble Court to hold that the petitioners are entitled for benefits of MACP in light of various judicial pronouncements. Though the applicant vide Annexure R/1 has specifically sought relief from the Hon'ble High Court of Chhattisgarh but the Court has refused to give such directions to the respondent department and only direction has been given to the respondents to consider the representations filed by the

applicants. So it is clear that dissatisfied with the order passed by this Tribunal vide Annexure CP/4 dated 10.03.2016, the applicants had filed the Writ Petition NO. 1234/2016 but the Hon'ble High Court has not acceded/accepted the relief and no directions regarding the entitlement for holding the MACP to the applicants has been issued. So we agreed with the submissions made by the respondent department that no specific directions regarding any specified manner have been directed by the Tribunal to decide the representations.

23. If the Annexure CP/4 is seen the Tribunal has directed the respondents to decide the claim of the applicants for financial upgradation in terms of MACP Scheme keeping the judicial verdicts in mind and dispose of their representations accordingly, which is clear as per Para 8 of the Annexure CP/4.

24. Regarding the finality of the Original Application No. 1241/2011 which was allowed by the CAT Allahabad Bench and was affirmed by the Hon'ble High Court of Allahabad vide Annexure R/2 and subsequently the Hon'ble Supreme Court in SLP (C) No. 13421/2014 dismissed the SLP filed by the department (Annexure R/3) but it is clear that the respondent department has filed the review petition before the Hon'ble Apex

Court vide Review Petition (C) No. 1303/15 and which is pending is as Annexure R/4 by replying respondents.

25. So we are in agreement with the counsel for the respondents that the Review Petition is still pending. Moreover, as per Annexure CP/4 liberty has been granted to the replying respondents to consider the case of the applicants regarding financial upgradation in terms of the MACP Scheme keeping the judicial verdicts in mind. Particularly, in view of Writ Petition filed by the applicants vide Annexure R/1 and Annexure CP/5, only direction was to decide the representation of the applicants within specified time as directed by this Tribunal as per Annexure CP/4. In the impugned order Annexure CP/1 the respondent department have consider the representation and detailed order has been passed and specifically in Para 6.7 of Annexure CP/1, it has been specifically mentioned that “On Scrutiny of the orders of the Hon’ble High Court of Allahabad in the background of aforementioned policy objectives, instructions/clarifications the reasons has been prescribed and the detailed order has been passed.

26. In view of the above discussions, we are of the view that there is no willful and intentional disobedience of our order dated 10.03.2016 and the respondent department has decided the

representations after considering all aspects as directed by us and has given the detailed reasons in the Annexure CP/1.

27. Hence this Contempt Petition is devoid of any merit and the same is dismissed. The respondents are discharged of contempt of notice. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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