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**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.210/00245/2015

Dated this Thursday, the 11th day of April, 2019

**CORAM : DR. BHAGWAN SAHAI, MEMBER (ADMINISTRATIVE)
R.N. SINGH, MEMBER (JUDICIAL)**

1. Naval Employees' Union
Through its General Secretary,
Shri R.K. Singh, Age 42 years,
162/6 Modi Street, Fort,
Mumbai 400 001.
2. Shri Jesuraju S. Mallapu, Age 49 years,
Building No.159, Room No.14
Naval Civilian Housing Colony,
Kanjur Marg (West),
Mumbai 400 078.
3. Shri Ashok K. Patade, Age 54 years,
Joseph Pereira Chawl, Room No.3,
Upper Pakhadi Kanjur Marg (East),
Mumbai 400 042.

Working as HSK-II & Syrang in the
Naval Dockyard, Mumbai 400 023.
(By Advocate Shri R.P.Saxena)

... Applicant

VERSUS

1. Union of India, through
The Secretary to Govt. of India,
Ministry of Defence, South Block,
New Delhi 110 001.
2. The Chief of Naval Staff,
Integrated Headquarters of MoD (Navy),
South Block, New Delhi 110 001.
3. The Flag Officer Commanding-in-Chief,
HQs Western Naval Command,
Naval Dockyard, Mumbai 400 023.
4. The Admiral Superintendent
Naval Dockyard, Mumbai 400 023.
(By Advocate Shri V.S.Masurkar)

... Respondents

ORDER ORAL
Per : R.N.Singh, Member (Judicial)

Shri R.P.Saxena, learned counsel for the applicant.

2. Shri V.S.Masurkar, learned counsel for the respondents.

3. **MA No.402/2015** :- By the present MA, the applicants have prayed for condonation of delay for a period of 75 days in filing of the aforesaid OA.

4. The learned counsel for the applicant submits that in the aforesaid OA, the applicants have challenged the impugned order dated 20.01.2014 (Annex A-1). He invites our attention to the impugned order and submits that from the very impugned order it is evident that the respondents have not taken it a final decision with regard to grant of the benefit of MACP Scheme as claimed by the applicants in the promotional hierarchy of pay scales on the ground that the CAT order dated 26.11.2012 being relied upon by the applicants has been challenged by the Department in Writ Petition (C) No.4662/2013 before the Hon'ble High Court of Delhi and stay has been granted therein vide order dated 26.07.2013 and therefore, IHQ/MoD (N) has confirmed that MACP benefits on the promotional hierarchy have not been accepted till such time the Hon'ble High

Court gives its final verdict in the above case.

5. The learned counsel for the applicants submits that from the impugned order, it is evident that the respondents have themselves not taken a final decision and therefore, there is no delay in filing of the present OA. He further argues that on account of rejection of the claim of the applicant for fixation of pay in the pay grade / pay scale applicable to the promotional post for the salary, the applicants are suffering from recurring loss and therefore, also there is no delay in filing of the aforesaid OA. However, he contends that the applicants have filed the present MA seeking condonation of delay of 75 days in filing of the present OA as a matter of abundant precaution.

6. Reply has been filed by the respondents to the MA and the same is opposed by the respondents. They rely upon the judgment of the Hon'ble Apex Court in ***Esha Battcharjee Vs. Management Committee of Raghnathpur Nafar Academy, 2014 (1) SLJ (SC) 20*** and also rely upon the judgment of the Hon'ble Apex Court in the case of ***State of Uttarakhand Vs. Sri Shiv Charan Sing Bhandari, 2014 (2) SLR 688 (SC)***.

7. However, the learned counsel for the respondents has not disputed about the very nature

of the impugned order dated 20.01.2014. It is also not in dispute that on account of non-grant of pay scale applicable to the promotional post as the MACP benefit, the applicants may suffer loss in salary every month. In these particular facts and circumstances, the MA No.402/2015 is allowed. The condonation of delay of 75 days in filing of the present OA is allowed.

8. The learned counsels for the parties submit that the issue involved in the present OA is identical to the issue involved in the OA filed before the Ernakulam Bench of this Tribunal and same was allowed, the said order was upheld by the High Court of Kerela but it is presently pending before the Hon'ble Apex Court in ***M.V.Mohanan Nair Vs. Union of India and others.***

9. The learned counsel for the applicant pray that the OA can be disposed of with a direction that decision of the Hon'ble Apex Court in ***M.V.Mohanan Nair Vs. Union of India in CC No.8271/2014 converted into SLP No.21803/2014*** shall be binding upon the parties in the present OA as well.

10. However, the learned counsel for the respondents submits that in place of disposing of the OA, it may be kept pending to await the decision of the Hon'ble Apex Court.

11. The learned counsel for the applicants places on record in this regard a copy of the order dated 13.02.2019 in OA No.696/2014 of Coordinate Bench of this Tribunal.

12. In the facts and circumstances, we are of the view that instead of keeping the OA pending, it should be disposed of as the final judgment of the Hon'ble Apex Court in the case of **M.V.Mohanan Nair Vs. Union of India** will be binding upon both the parties.

~
(R.N.Singh)
Member (Judicial)

(Dr. Bhagwan Sahai)
Member (Administrative)

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