

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

CP No.623/2018 and MA No.5220/2018
In
O.A. No.2400/2017

Reserved On: 01.03.2019

Pronounced on: 18.03.2019

**HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MR. A.K. BISHNOI, MEMBER (A)**

Shyam Sunder, Aged about 59 years,
S/o Late Shri Banwari Lal,
R/o H-No 1/5131, Street No.4,
Balbir Nagar, Shahadara,
Delhi-110032.

(Applicant No.2 in OA No.2400/2017)Petitioner

(By Advocate : Shri Ajesh Luthra)

Versus

1. Shri Amulya Patnaik
Commissioner of Police,
PHQ, MSO Building,
IP Estate, New Delhi.
2. Shri Mohd. Irsad Hiader
Deputy Commissioner of Police (Establishment),
M.S.O. Building, I.P. Estate,
New Delhi.
3. Shri P.K. Singh
Deputy Commissioner of Police (East),
Shalimar Park, Near Swarn Cinema,
Shahdara, Delhi-110032.
4. Shri Rajiv Gauba
Secretary,
Union of India,
Ministry of Home Affairs,
North Block,
New Delhi.Respondents

(By Advocate : Mrs. Harvinder Oberoi)

ORDER

By Hon'ble Mr. V. Ajay Kumar, Member (J)

The sole petitioner in the instant CP along with certain others filed O.A. No. 2400/2017 and the said OA, along with O.A. No. 2484/2017 was disposed of by a common order dated 09.01.2018 as under:-

“With the consent of all the learned counsels, these OAs have been taken up for final disposal.

2. The issue involved in these OAs is granting of third MACP benefit to the employees under the MACP scheme on completion of either 10 years of service from the second MACP/promotion or 30 years of overall service. In the similar circumstances, when identical impugned action was questioned in OA No.1288/2014 in **Manju Vashistha & Ors.Vs. UOI & Ors.**, this Tribunal allowed the said OA and the Writ Petition filed by the respondents in WP(C) No.11826/2016 in **Union of India & Ors. Vs. Manju Vashistha & Ors.** was dismissed by the Hon'ble High Court of Delhi on 03.02.2017. The respondents preferred SLP against the said decision on 07.09.2017. Though the applicants are seeking to extend the benefit of the OA No.1288/2014 in **Manju Vashistha & Ors.Vs. UOI & Ors.**, as upheld by the Hon'ble High Court by quashing the impugned Annexure-A/1 order dated 13.06.2017, wherein third MACP granted to them was withdrawn. However, the respondents submits that since the SLP is pending before the Hon'ble Apex Court, the benefit of the said OA cannot be granted at this stage.

3. Once it is established that the applicants are identically placed like the applicants in Manju Vashistha & Ors. Vs. Union of India & Ors. in OA No.1288/2014, they are also entitled for the same benefits granted to them. In the circumstances, the OAs are disposed of in terms of the judgment of this Tribunal in OA No.1288/2014, in Manju Vashistha & Ors. Vs. Union of India & Ors., as upheld by the Hon'ble High Court in WP(C) No.11826/2016, however, the same shall be subject to the result of the SLP filed and pending before the Hon'ble Apex Court. No costs.

2. The sole petitioner in the CP, who was the applicant No.2 in O.A. No. 2400/2017, filed the instant CP contending as under:-

“3. That though the respondents did not disturb the petitioner’s emoluments initially, however, when the petitioner was nearing superannuation respondents, without supply of any order, withdrew the MACP benefits and gave him reduced pay for the months of April 2018 and May 2018. The petitioner superannuated on 31.05.2018. His LPC for the month of March 2018 is annexed herewith as Annexure CP/X-4 indicating his monthly pay @Rs.60400/- p.m. which however has been reduced to Rs.58600/- pm as is evident from LPC of April, 2018 (Annexure CP/X-5) and with further consequence of reduction of retiral benefits including pension, commutation and leave encashment. Further, an amount of Rs.1,70,000/- (Rupees one lakh seventy thousand only) has also been received from his gratuity on account of withdrawal of MACP benefits from the date earlier granted which stood protected by virtue of orders passed by this Hon’ble Tribunal on 09.01.2017.

4. That thus, respondents who had initially been complying with the Court orders, deliberately violated the same, at the time of petitioner’s retirement”.

3. A Full Bench of this Tribunal by its order dated 23.05.2016 in O.A. No.1288/2014 in Smt. Manju Vashishtha and Others Vs. Union of India and Others, answered the question that “whether for 2nd/3rd upgradation under the MACP Scheme it is essential that the incumbent completes 10 years of service in the existing grade or not?” in the negative.

4. The said judgment of the Full Bench of this Tribunal in Smt. Manju Vashishtha and Others (supra), was upheld by the Hon’ble High Court of Delhi in W.P. (C) No.11826/2016, by order dated 03.02.2017.

5. The O.A. No. 2400/2017 filed by the applicant and others seeking extension of the benefit of the judgment in Smt. Manju Vashishtha and Others (supra), as upheld by the Hon’ble High Court, was disposed of by this Tribunal on 09.01.2018, in terms of

the judgment in Smt. Manju Vashishtha and Others (supra), however, subject to the result of the SLP said to have been filed and pending as on the said date.

6. Even as per the respondents as there was no stay in the SLP filed in the case of Smt. Manju Vashyishtha and Others (supra), as on the date of disposal of the O.A. No.2400/2017, filed by the petitioner, the respondents have extended the benefit of judgment in Smt. Manju Vashishtha and Others (supra) to the petitioner, and have continued to pay to the applicants the benefit of MACP, in terms of the judgment in Smt. Manju Vashishtha and Others (supra), even after the disposal of the OA of the petitioner.

7. However, the petitioner retired from service on attaining the age of superannuation on 31.05.2018. At this stage, on the direction of the Pay and Accounts Officer, the pay of the petitioner was reduced and re-fixed vide Office Order dated 31.05.2018 subject to the final outcome of the SLP in Smt. Manju Vashyishta's case (supra). Thereafter, the Hon'ble Apex Court in SLP filed in Smt. Manju Vashyishta's case (supra) by order dated 30.11.2018, granted interim stay of the orders of the Hon'ble High Court of Delhi in Smt. Manju Vashishta's case (supra).

8. Heard Shri Ajesh Luthra, the learned counsel for the petitioner and Mrs. Harvinder Oberoi, the learned counsel for the respondents and perused the pleadings on record.

9. Smt. Harvinder Oberoi, the learned counsel appearing for the respondents while not disputing the fact that as on the date of refixation of the pay of the petitioner, i.e., on 31.05.2018, against the orders of this Tribunal in O.A. No.2400/2017 of the petitioner, there was no stay from the Hon'ble Apex Court in Smt. Manju Vashyishta's case (supra), however, submits that since the petitioner retired from service and since the OA of the petitioner was disposed of subject to the final result of the SLP in Smt. Manju Vashyishta's case (supra) and once the petitioner retired from service and after retirement of the petitioner, it is not possible for the respondents to recover the money, if any paid in excess, in the event of allowing of the SLP in Smt. Manju Vashyishta's case, the respondents with bona fide intention have refixed the pay of the petitioner vide order dated 31.05.2018. The learned counsel further submits that the action of the respondents is neither wilful nor wanton but was done in the above referred circumstances. The respondents have no intention to violate any of the orders of this Tribunal and that they have submitted unconditional apology for the same through the reply affidavit in the CP, if in the event this

Tribunal comes to the conclusion that the respondents have committed any wilful contempt of the orders of this Tribunal.

10. The learned counsel for the respondents further submits that, since as on today, the Hon'ble Apex Court granted stay in the SLP filed in Smt. Manju Vashyishta's case (supra), basing on which the benefit was continued to the petitioner till the passing of the refixation order dated 31.05.2018, compelling the respondents to grant/restore/continue any benefit to the petitioner in terms of the judgment in the case of Smt. Manju Vashyishtha and Others (supra), as on today, would be against the orders of the Hon'ble Apex Court.

11. Shri Ajesh Luthra, the learned counsel appearing for the petitioner in the CP submits that once admittedly there was no stay in the SLP in Smt. Manju Vashyishta's case (supra), as on 31.05.2018, on which date the pay of the petitioner was refixed against the orders of this Tribunal in O.A. No. 2400/2017, the respondents cannot escape from the contempt, by showing a subsequent stay order of the Hon'ble Apex Court in Smt. Manju Vashyishta's case (supra).

12. It is true that when the respondents refixed the pay of the petitioner on 31.05.2018, there was no stay in Smt. Manju Vashyishta's case from the Hon'ble Apex court. However, in view of

the submissions made on behalf of the respondents, and in view of the fact that the SLP filed in Smt. Manju Vashyishta's case (supra) is pending and the stay order granted in Smt. Manju Vashyishta's case (supra) by the Hon'ble Apex Court is subsisting, we are of the considered view that the instant CP should be adjourned *sine die* till the disposal of the SLP (Civil) Diary No(s). 28485/2017 in Union of India and Others Vs. Manju Vashyishsta & Others. Accordingly, the instant CP is adjourned *sine die*.

13.

Both

the parties are at liberty to move an appropriate application once the said SLP is finally disposed of. No costs.

M.A. No.5220/2018 in O.A. No. 2400/2017

14. This MA is filed by the respondents in the OA seeking clarification of the judgment in the OA in view of the stay granted by the Hon'ble Apex Court on 30.11.2018 in Smt. Manju Vashyishta's case (supra).

15. For the reasons mentioned in the C.P. No.623/2018 in O.A. No.2400/2017 whereby it has been adjourned *sine die*, the instant MA is also adjourned *sine die*. No costs.

Let a copy of this order be placed both in CP No.623/2018 in

O.A. No. 2400/2014 and M.A. No. 5220/2018 in O.A. No. 2400/2017.

(A.K. BISHNOI)
Member (A)

(V. AJAY KUMAR)
Member (J)

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we are of the considered view that the action of the respondents, though against the orders of this Tribunal as prevailing on 31.05.2018, does not amount to wilful and deliberate contempt of the orders of this Tribunal. Accordingly, we accept the unconditional apology submitted by the respondents. However, in view of the subsisting stay in Smt. Manju Vashiyishta's case (supra) from the Hon'ble Apex Court, we are of the view that the instant CP is liable to be closed, giving liberty to the petitioner to avail his remedies in accordance with law, after the final disposal of the SLP in Smt. Manju Vashiyishta's case (supra).

13. In **Modern Food Industries (India) Ltd. and Another Vs. Sachidanand Dass and Another, 1995 Supp (4) SCC 465**, the Hon'ble Apex Court observed as under:-

“.....It is true that a mere filing of an appeal and an application for stay do not by themselves absolve the appellants from obeying It the order under appeal and that any compliance with the learned Single Judge's order would be subject to the final result of the appeal. But then the changes brought about in the interregnum in obedience of the order under appeal might themselves be a cause and source of prejudice. Wherever the order whose disobedience is complained about is appealed against and stay of its operation is pending before the Court, it will be appropriate to take up for consideration the prayer for stay either earlier or at least simultaneously with the complaint for contempt. To keep the prayer for stay stand-by and to insist upon proceeding with the complaint for contempt might in many conceivable cases, as here, cause serious prejudice. This is the view taken in [State of J & K v. Mohd. Yaqoob Khan \(1992\) 4 SCC 167](#).

5. In the present case, under the threat of proceedings of contempt, the appellants had to comply with the order of the learned Single Judge notwithstanding the pendency of their appeal and the application for stay. The petitioners are confronted with a position where their stay application is

virtually rendered infructuous by the steps they had to take on threat of contempt" [See also **Suresh Chandra Poddar Vs. Dhani Ram and Others, (2002) 1 SCC 766**].

14. Accordingly, the CP is closed with the said liberty and the notices issued to the respondents are discharged. However, the respondents shall release the retiral benefits of the petitioner, as per the refixation order dated 31.05.2018, forthwith, if not already released, pending the SLP in Smt. Manju Vashiyishta's case (supra). Further, it is needless to mention that the petitioner shall be entitled to all the benefits under the judgment of Smt. Manju Vashishtha (supra), in the event, the Hon'ble Apex Court dismisses the pending SLP.