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CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No.O.A.350/01284/2014

Date of order : 8.3.16

Present : Hon'ble Mrs. Bidisha Banerjee, Judicial Member

Hon'ble Mr. P.K. Basu, Administrative Member

BISWABANI HALDER

VS.

UNION OF INDIA & ORS.

For the applicant : Mr. B. Nandi, counsel

For the respondents : Mr. C.R. Bag, counsel
 Mr. U.P. Bhattacharyya, counsel
 Mr. S.K. Ghosh, counsel
 Mr. S.K. Bhattacharyya, counsel

ORDERPer Mr. P.K. Basu, A.M..

The applicant was appointed as Hindi Translator on 20.11.1980 in the pay scale of Rs.4500-7500 in the Official Language Wing of Andaman and Nicobar Administration, Port Blair. She was promoted to the post of Assistant Hindi Officer on 03.11.1988 which was re-designated as Senior Hindi Translator and placed in the scale of Rs.5500-9000 on 21.09.1997. The applicant then applied for a job offered by Jute Commissioner's Office under Government of India against the post of Hindi Translator. She was selected and joined this post on 09.02.1999 in the scale of Rs.4500-7000.

2. The applicant was granted 2nd and 3rd financial upgradation under M.A.C.P. w.e.f. 01.09.2008 and 19.11.2009. Financial upgradations under MACP were ~~not~~ granted on the basis of completion of 20 years and 30 years of regular service by computing the respective eligibility period from the date of her initial appointment i.e. 20.11.1980. However, the 2nd and 3rd MACP upgradations were withdrawn vide order dated 06.05.2013(Annexure A-4). Instead, she was allowed first MACP upgradation on completion of 10 years of service in the Jute Commissioner's Office, w.e.f. 09.02.2009. Accordingly his pay was refixed vide order dated 19.08.2014. Being aggrieved by this order, the applicant has filed this O.A. seeking the following reliefs:-

"a) An appropriate order be passed by the Tribunal to rescind, cancel or set aside the order being No. Jute(A)/809(61)/99-11 dated 19th August, 2014 of the Deputy Jute

Commissioner and Head of Office, Office of the Jute Commissioner, 3rd MSO Building, CGO Complex, DF Block, E&F Wing, 4th Floor, Sector-I, Salt Lake City, Kolkata-700 064, by allowing only 1st Financial upgradation under the M.A.C.P.S. in supersession of the 2nd and 3rd financial upgradations under M.A.C.P.S. allowed to the applicant earlier.

b) An appropriate order be passed by the Hon'ble Tribunal to set aside the order No.Jute(A)/809(61)/99-11 dated 19th August, 2014 of the Deputy Jute Commissioner directing the recovery of alleged excess payment made to the applicant for grant of 2nd and 3rd financial upgradations under M.A.C.P.S. allowed to the applicant to the tune of a sum of Rs.90,608/-(Rupees ninety thousand six hundred and eight) only in nine equal monthly instalments @ Rs.10000/- p.m. and 1(one) instalment for the balance amount of Rs.608/- from the pay bill of the September 2014 to May 2015 and June 2015 respectively;

c) Any order do issue directing the respondent authorities to allow the benefit of the 2nd and 3rd financial upgradations to the applicant under the M.A.C.P.S. and not to discontinue the said benefit already given to the applicant and she is enjoying.

d) Any other order/orders, direction/directions as this Hon'ble Tribunal may deem fit and proper for the ends of justice."

3. To appreciate the issue involved, it is necessary to quote the following provisions of the M.A.C.P. Scheme as contained in Annexure -I of the Office Memorandum dated 19th May, 2009 on the subject of M.A.C.P.(Annexure A-5):-

"9. 'Regular service' for the purposes of the MACPS shall commence from the date of joining of a post in direct entry grade on the regular basis either on direct recruitment basis or on absorption/re-employment basis. Service rendered on adhoc/contract basis before regular appointment on pre-appointment training shall not be taken into reckoning. However, past continuous regular service in another Government Department in a post carrying same grade pay prior to regular appointment in a new Department, without a break, shall also be counted towards qualifying regular service for the purpose of MACPS only (and not for the regular promotions). However, benefits under the MACPS in such cases shall not be considered till the satisfactory completion of the probation period in the new post.

10. Past service rendered by a Government employee in a State Government/statutory/autonomous body/Public Sector organization, before appointment in the Government shall not be counted towards regular Service.

14. The MACPS is directly applicable only to Central Government Civilian employees. It will not get automatically extended to employees of Central Autonomous/Statutory Bodies under the administrative control of a Ministry/Department. Keeping in view the financial implications involved, a conscious decision in this regard shall have to be taken by the respective Governing Body/Board of Directors and the administrative Ministry concerned and where it proposed to adopt the MACPS, prior to concurrence of Ministry of Finance shall be obtained.

4. The applicant's case is that Andaman and Nicobar Administration has introduced M.A.C.P. Scheme and in this regard, office order No.2127 dated 10.06.2010(Rejoinder, page 10) and Office Order dated 23rd January,2014 of the Andaman and Nicobar Island Administration(Rejoinder, page 17) have been annexed which are orders pertaining to granting of financial upgradation under M.A.C.P. Scheme to certain Government servants in the Andaman & Nicobar Administration.

5. Secondly it is argued that her past services in Andaman and Nicobar Island shall qualify for regular service as per provision 9 quoted above because he was in the same Grade Pay of

Rs.4500-7000 in A&N Administration. It is also argued that according to provision 10 quoted above, past services rendered by a Government employee in a "State Government, Statutory Body, Autonomous Body, Public Sector Undertaking" before appointment in the Government, shall not be counted towards regular service. It is argued that Andaman & Nicobar Administration is not a State Government. In fact it is administered by the Ministry of Home Affairs, Government of India, and, therefore, the past services have to be counted in her case. Therefore, the applicant states that Office Order dated 19.08.2014 passed by the Office of the Jute Commissioner for recovery of excess amount due to change in upgradation in MACP should be set aside.

6. Finally, it is argued that though the respondents have cited the judgment of the Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal vs. State of Uttarakhand [(2012) 4 SCC(Civ) 450]** to state that the respondents can make recovery of erroneous payments made, this has been later on modified by the judgment of Hon'ble Supreme Court in the case of **State of Punjab & Others vs. Rafique Masih(White Washer) & Others [(2015)2 Supreme Court Cases(L&S) 33]** specifically, para 18 of the judgment which stipulates under which situations recoveries by employer would be impermissible in law.

7. Per contra the respondents argued that the applicant is not covered by the provisions of Rule 9 quoted above as he was not in the same Grade Pay prior to joining the Jute Commissioner's office as he was in the scale of Rs.5500-9000 and joined in the Jute Commissioner's office in the pay scale of Rs.4500-7000 whose corresponding grade pays are not the same after implementation of the VIth Central Pay Commisison.

8. It is also argued that as per provision 14 of the MACP. Scheme quoted above, it is clear that MACP is directly applicable only to Central Government civilian employees and the applicant was not a Central Government civilian employee prior to his joining the Jute Commissioner of India.

9. It is also stated that vide letter dated 02.02.2009 of the DOP&T regarding redeployment of surplus staff, the following clarifications has been made:-

"13(a) The Surplus Staff on redeployment are not entitled to benefit of past service rendered by them in the previous organization for the purposes of their seniority in the new organization. Such employees are to be treated as fresh entrants in the matter of their seniority, promotion etc."

10. Heard Id. counsel for both sides and perused the pleadings.

11. The issue here is very simple that whether the past services of the applicant in Andaman and Nicobar Island Administration has to be included while working out regular service for the purpose of MACP. The facts that emerge, are that MACP is directly applicable only to Central Government civilian employees. The applicant is clearly not a Central Government employee. Therefore, all MACP calculation will start from the date she joined the Jute Commissioner's Office. Moreover, the past service rendered by an employee in a State Government, Statutory Body, Autonomous Body, Public Sector Undertaking, is not to be counted towards regular service. The applicant's argument that the service under Andaman and Nicobar Island Administration is not a State Government service, therefore, provision 10 does not apply to him, is not tenable. Para 10 read with Rule 14 clearly means that past service in a Government of India Department will only be counted for the purpose of MACP Scheme. Moreover, they have to be in the same Grade Pay which we have seen, is not the case with the applicant. We would like to make it clear that while deciding the MACP matter, we have to proceed strictly as per the MACP Guidelines. Past services rendered in Andaman and Nicobar Island may be included under different rules. For example, for working out qualifying service for pension etc., but that is not the issue before us. The question here is, whether the past services rendered in Andaman and Nicobar Island Administration will be counted for the purpose of consideration under the M.A.C.P. Scheme or not. The answer is clearly in the negative.

12. The O.A., therefore, does not succeed. It is dismissed. However, on the question of recovery the respondents are directed to pass specific orders keeping in view the provisions of judgment of the Hon'ble Supreme Court in the case of **Rafiq Masih(supra)**. If the applicant falls in any of the categories stipulated in para 18 of the said judgment, then as per the Supreme Court's decision, recovery would be impermissible in law. There shall be no order as to cost.


(P.K. BASU)
Administrative Member


(B. BANERJEE)
Judicial Member

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