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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

***Date of decision: 29.11.2025***

+ W.P.(C) 11590/2019 & CM APPL. 47622/2019

GOVT. OF NCT OF DELHI AND ANR. ....Petitioners

Through: Mrs.Avnish Ahlawat, SC for  
GNCTD (Services) with  
Mr.Nitesh Kumar Singh and  
Ms.Aliza Alam, Advs.

versus

SH. PAWAN KAMRA .....Respondent

Through: Mr.Shankar Raju and  
Mr.Nilansh Gaur, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MS. JUSTICE MADHU JAIN**

**NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed challenging the Order dated 28.11.2018 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the, 'Tribunal') in O.A. 2839/2017, titled ***Pawan Kamra, DANICS (Ad hoc), Group "B" v. Govt. of N.C.T. of Delhi & Anr.***, allowing the O.A. filed by the respondent herein with the following direction:

*"8. In the circumstances, the O.A. is allowed and the impugned orders are quashed and the respondents are directed to grant the 3<sup>rd</sup> financial upgradation under MACP Scheme with all consequential benefits to the applicant with effect from the due date, if he is otherwise eligible. This exercise shall be completed within 60 days from the date of*



*receipt of a certified copy of this order. However, this order shall not preclude the respondents from taking any appropriate action against the applicant, if the circumstances warrant, depending on the gravity of the charges levelled against him. No order as to costs.”*

2. To give a brief background of the facts in which the present petition arises, the respondent was initially appointed as Gr.II(DASS) w.e.f. 28.02.1983, and thereafter, he was promoted to the post of Gr.I (DASS) w.e.f. 11.05.1993. He joined in the said post on 31.05.1993. On completion of four years of regular service in the post of Gr.I (DASS), the respondent was granted Non-Functional Scale (NFS) w.e.f. 31.05.1997 as per Services Department (Services-I Branch) order No.56 dated 03.02.2015.

3. The MACP Scheme, in supersession of ACP Scheme, was implemented by the DOPT OM No.35034/3/2008-Estt. (D) dated 19.05.2009 w.e.f. 01.09.2008. The Scheme has been made applicable to the employees of Govt. of NCT of Delhi by the Finance (Budget) Department's Letter dated 27.05.2009.

4. It is the case of the petitioners that the respondent, while working as Value Added Tax Officer in the Department of Trade & Taxes, in the matter of a complaint dated 13.02.2009, was deputed along with Sh. Shashi Kumar, VATI to carry out audit and investigation of M/s “Chaupal”- A village Restaurant (A Unit of Meera Hotels). On inspection of the above said restaurant, it was found that the dealer was charging VAT, without registration with the Department, but not depositing it with the authorities. It was alleged



that the respondent herein had taken bribe from the partner of M/s “Chaupal”- A village Restaurant. Thereafter, a copy of complaint, statement of complainant, and draft article of charges along with imputation of misconduct was forwarded by the Vigilance Department *vide* Letter dated 05.06.2009 to the Trade & Taxes department for initiating departmental action against the respondent. Besides that, FIR No. 11/11 dated 02.12.2011 was also registered against the respondent under Section 13(i)(II) of the Prevention of Corruption Act, 1988 and the same is also pending.

5. After the implementation of the MACP Scheme, the Department, forwarded the case of the respondent for the grant of 3<sup>rd</sup> MACP to the Services Department, *vide* Letter dated 27.04.2015, for considering his case, who sought for vigilance status report from the Directorate of Vigilance (DOV). On 10.08.2015, the DOV informed that a proposal for initiating disciplinary proceedings against the respondent was pending with the DOV for want of additional information/documents from Anti-Corruption Branch, GNCT of Delhi.

6. Thereafter, on the basis of vigilance status report, the case of the respondent for grant of MACP was placed before the Screening Committee on 03.03.2016, 23.09.2016, 17.03.2017, which, after considering the information and documents placed before it, deferred the case with the direction to obtain the fresh vigilance clearance indicating therein the present status of the case, and thereafter, finally the Screening Committee found him unfit and rejected his case in its Meeting dated 26.11.2019.



7. After acceptance of recommendations of the Screening Committee by the competent authority, an Order dated 12.02.2020 was issued intimating respective Administrative Department with request to inform the Officer accordingly.

8. Aggrieved thereof, the respondent approached the learned Tribunal with the said O.A.. The same was allowed by the Tribunal in the above quoted terms.

9. The learned counsel for the petitioners submits that as the vigilance clearance had been denied to the respondent when his case was being considered for grant of 3<sup>rd</sup> MACP, the Screening Committee rightly deferred the consideration of his case. Later, as a Charge sheet dated 18.04.2017 was issued to the respondent, and he was eventually visited with a penalty *vide* Orders dated 14.06.2019 and 12.02.2020, his case for grant of 3<sup>rd</sup> MACP was rejected.

10. On the other hand, the learned counsel for the respondent, placing reliance on the Judgment of the Supreme Court in ***Union of India & Ors. v. K. V. Jankiraman Ors.***, 1991 (4) SCC 109, and the consequent O.M. No. 22011/4/91-Estt.(A) dated 14.09.1992, submits that it is only in the three given circumstances, as stipulated by the Supreme Court, that the vigilance clearance could have been denied, that are, (i) where the government servant is under suspension; (ii) where the charge sheet has been issued and disciplinary proceedings are pending against the government servant; and, (iii) where the prosecution for a criminal charge is pending against the government servant.

11. He submits that none of these three conditions had been



fulfilled in the present case in the year 2016, when the case of the respondent was to be considered for grant of the 3<sup>rd</sup> MACP benefit.

12. Placing reliance on Clause 18 of the O.M. No.35034/3/2015-Estt.(D) dated 22.10.2019, which gives the consolidated guidelines regarding MACP Scheme, the learned counsel for the respondent submits that the rules of promotion are to govern the consideration for grant of MACP and, therefore, the above O.M.(s) and the Judgment of the Supreme Court in ***K. V. Jankiraman*** (supra) would be applicable. He submits that the subsequent issuance of a charge sheet or even a penalty order issued to the respondent, would have no effect on the same. He submits that the above submission had, therefore, rightly been accepted by the learned Tribunal in passing the Impugned Order.

13. We have considered the submissions made by the learned counsels for the parties.

14. From the above narration of facts, it is evident that the case of the respondent for grant of 3<sup>rd</sup> MACP benefit was first considered by the Screening Committee on 03.03.2016. On the said date, none of the three conditions, as stipulated by the Supreme Court in ***K. V. Jankiraman*** (supra) and later accepted in form of O.M. dated 14.09.1992, were existing against the respondent.

15. Clause 18 of the O.M. dated 22.10.2019, which gives the consolidated guidelines regarding MACP Scheme, reads as under:

*“18. In the matter of disciplinary/ penalty proceedings, grant of benefit under the MACPS shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of the CCS (CCA) Rules, 1965 and instructions issued*



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*thereunder.”*

16. Therefore, while considering the grant of benefit of MACP, the officer is to be considered in accordance with the rules governing normal promotion.

17. Given the above facts, we find that the vigilance clearance of the respondent had been wrongly denied and the case of the respondent was to be considered by the Screening Committee as on his date of entitlement, that is, 01.09.2008 or at least on the date when the Screening Committee met, which is on 03.03.2016.

18. As far as the submission of the learned counsel for the petitioners that subsequently the respondent has been visited with the penalty in the disciplinary proceedings, is concerned, in our view, it will not have any effect on the entitlement of the respondent especially when the learned counsel for the respondent submits that he has been visited with the penalty of compulsory retirement.

19. Given the above, we find no infirmity in the Order passed by the learned Tribunal.

20. The petition, along with the pending application(s) is, accordingly, dismissed.

**NAVIN CHAWLA, J**

**MADHU JAIN, J**

**NOVEMBER 29, 2025/sg/Vs**