

HPR

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH**

ORIGINAL APPLICATIONS/310/01720 AND 01721/2014

Dated this 30th day of September, Two Thousand Fifteen

P R E S E N T

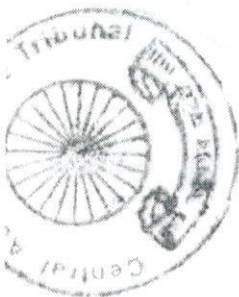
**THE HON'BLE SHRI K. ELANGO, JUDICIAL MEMBER
AND
THE HON'BLE SHRI R. RAMANJAM, ADMINISTRATIVE
MEMBER**

1. Mangala Sundari,
D/o Late R. Natarajan,
26/2, CPWD Quarters,
Besant Nagar, Chennai.
2. S.P. Ravichandran,
S/o Late S.P. Ramachandran,
New No.13, Old 7,
Prabhakaran Street,
Hindustan Lever Colony,
Pammal, Chennai.
3. D. Rajasekar,
S/o R. Doraisamy,
No.5B, 21st Street,
Tansi Nagar, Velachery
Chennai.
4. K.P. Sai Prabha,
D/o Late VK Padmanabhan,
18/26, 4th Street,
Damodarapuram, Adyar,
Chennai.
5. A. Janaki Raman,
S/o Anthonosamy,
Flat No.34, Badal Residency,
Periyar Road, Chrompet,
Chennai.
6. G. Mohan Kumar,
S/o N.G. Gopalan,
No.9, Balavinayagar Nagar,
NGO Colony, Thiruvallur.



Applicants in OA
1720/2014

- 7.S. Ananthanarayanan,
S/o Late A. Srinivasan,
Plot No.30, 3rd Street,
Subbaiah Nagar,
Madanandapuram, Chennai.
- 8.N. Vijayan,
S/o K. Narayanan,
21, Gandhi Street, GM Nagar,
Ambattur, Chennai.
- 9.M.S. Mahalakshmi,
D/o M.R. Sambasivan,
'Devi Sadanam',
Plot No.413, Door No.21,
Gandhi Street, II Lane,
Ganamurthy Nagar,
Ambathur, Chennai.
- 10.T.R. Ravi Sankar,
S/o T.S. Ramachari,
2/1164, VV Kovil Street,
Mugaliwakkam, Chennai.
- 11.D.Selvaraj,
S/o M. Dhanavelu,
Plot No.1, Maruthi Nagar,
Phase III, 2nd Main Road,
2nd Cross Street, Thundalam,
Chennai.
- 12.V.V.Kumaraswamy,
S/o v.K. Vilvanathan,
28, State Bank Colony,
Madhavaram High Road,
Perambur, Chennai.
- 13.C.S. Narayanasamy,
S/o C. Sonal,
6-7/31, Chinna Nachaippan St.,
Viswanathapuram, Madurai.
- 14.K. Renganathan,
S/o K. Krishnareddy,
Plot No.3, Devinagar 2nd Main Road,
2nd Left Street, Kundrathur,
Chennai.
- 15.R. Balakrishnan,
S/o M. Ramachandran,
Flat No. F3, No.11, Andal Nagar,
4th Cross Street, Adambakkam,
Chennai.

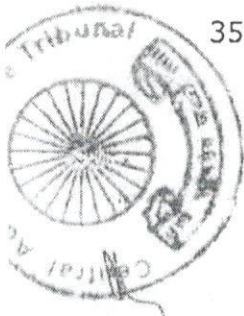


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- 16.W. Nazir Ahmed Khan,
S/o K.A. Wahab Khan,
No.22, Muthial Street,
Little Mount, Chennai.
- 17.P. Rajani,
D/o M. Unnikumaran,
D8, Vaishali Apartments,
22/17, Dr. Nair Road,
T. Nagar, Chennai.
- 18.R. Latha,
D/o S. Ramanathan,
No.14, Muthu Street,
Mylapore, Chennai.
- 19.S. Chitra,
D/o (Late) K.S. Krishnasamy,
Plot No.3, Door No.8,
Parthiban Street, Ullagaram,
Chennai.
- 20.V.Bhanumathy,
D/o Late P. Venkataram,
29/38, Ganapathipuram Main Road,
Chennai.
- 21.Padma Jagadishram,
D/o R. Venkataraman,
Old No.10, New 21,
Manickam Street,
West Mambalam, Chennai.
- 22.S. Ganesamoorthy,
S/o K. Singaram,
1/10, Courtallam Nagar,
Kovaipudur, Coimbatore.
- 23.D.Hilda Geetharani,
D/o S. Devadoss,
A-43, Periyar Nagar, Chennai.
- 24.C.J. Venkataraman,
S/o C.V. Jayaraman,
No.78, Venkataratanam Nagar,
Adayar, Chennai.
- 25.R. Chitra,
D/o KC Ramanathan,
Old No.9, New No.25,
Balakrishna Naickkan Street,
West Mambalam, Chennai.



- 26.M.Radhakrishna Murthy,
S/o M.K. Govindarajulu,
No.81/33, SPS First Street,
Royapettah, Chennai.
- 27.S.Narayanan,
S/o K.N. Srinivasan,
No.49, Flat A, 47th Street,
Ashok Nagar, Chennai.
- 28.G. Sekhar,
S/o J. Gurumoorthy,
1, Brindavan Apartments,
No.55/1, School Road,
Parambūr, Chennai.
- 29.K.S. Kathirvel,
S/o R.K. Shanmugam,
S-2, Gokul Flats,
No.17/9, Corporation School Road,
Nugambakkam, Chennai.
- 30.S.Chitra,
D/o R. Subramanian,
11/2 CPWD Quarters,
Besant Nagar, Chennai.
- 31.Selvipandian,
D/o C. Thirunavukkarasu,
J-1584, 13th Main Road,
Anna Nagar West, Chennai.
- 32.S. Vetriselvan,
S/o G. Sundaramurthy,
H-27, TNHB Quarters,
Velisemmandalam, Cuddalore.
- 33.Jayalakshmi Narayanan,
D/o Lt. V. Swaminathan,
103/Flot No.8 II Floor,
Triplicane High Road,
Triplicane, Chennai.
- 34.N. Elangovan,
S/o V. Narayanan,
230, Sector 3, RK Puram,
New Delhi.
- 35.B. Kumar,
S/o R. Balakrishnan,
G-2, SG Srivari Flats,
No.7, 10th Street,
Parthasarathy Nagar,
Adampakkam, Chennai.



36.P. Paramasivam,
S/o P. Palanichamy,
7-1-88, Kallar Street,
Sholavandan,
Vadipatti Taluk,
Madurai District.

37.F. Selvakomagan,
No.19/217, JCK Nagar,
Chengalpattu.

.. Applicants in OA
1721/2014

By Advocate Shri R. Muthukumaraswamy, Sr. Counsel
for M/s A. Jenasenar, E. Manoharan, I. Nagarajan
and B. Jegannath

Vs.

1.Union of India
rep by Secretary to Government,
Ministry of Personnel, Public Grievances
and Pension,
Department of Personnel and Training,
North Block, New Delhi.

2.The Comptroller & Auditor General of India,
Deen Dayal Upadhyay Marg,
New Delhi.

3.The Principal Accountant General(A&E),
361,Anna Salai,
Teynampet, Chennai, Tamil Nadu.

By Advocate Shri K. Rajendran for R.1
Shri V. Vijay Shankar for R.2 & 3

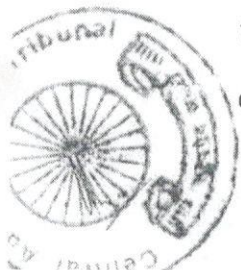


ORDER

(Pronounced by The Hon'ble Mr.R. Ramanujam, Administrative Member)

An identical relief is sought in both these OAs founded on similar facts and circumstances,. The applications were therefore heard together and are being disposed of by this common order.

2. The case of the applicants is that during the implementation of the Modified Assured Career Progression Scheme (MACP) introduced as per the recommendations of the Sixth Pay Commission, the second and third respondents have refixed the Grade Pay of the personnel in the post of Ad-hoc SOs/AAOs and Senior Accountants who had either failed in the SOGE Examination or opted not to take the same, who are juniors/subordinates to the applicants at Rs.5400/- in Pay Band 2. The resultant position is that the applicants who were regularly promoted Senior Officers while functioning as AAOs continued to remain in the Grade Pay of Rs.4800/-, even as their juniors/subordinates are drawing higher Grade Pay of Rs.5400/- This disparity is impermissible under the Fundamental Rules(FR). Hence, this Tribunal vide its order dated 29.12.2010 in OAs 966 and 967 of 2009 had directed that the benefit of Grade Pay of Rs.5400/- under the MACP Scheme be extended to the Senior Officers similar to the applicants herein. The order of this Tribunal was confirmed by the Hon'ble High Court of Madras in W.P. No.18611 and 18612 of 2011 vide order dated 19.3.2014. and eventually by the



Hon'ble Apex Court. The applicants herein have filed these applications seeking to extend the benefits of MACP Scheme and fix their Grade Pay at Rs.5400/- on par with their juniors/subordinates for the tenure/period served by them as AAOs following the implementation of the MACP Scheme on 1.9.2008.

3. Contesting the claim of the applicants, the respondents have submitted that all the applicants were appointed as Clerks in the third respondent's office and promoted as Accountant, Senior Accountant and after passing the Section Officers Grade Examination(SOGE) as Section Officer, Assistant Accounts Officer and Accounts Officer and are presently getting Rs.5400/- Grade Pay as per the Sixth Central Pay Commission's recommendations. Thus, the applicants have enjoyed three or more promotions in their career. MACP Scheme provides for financial upgradations for the employees who are not granted promotion thrice in their career. As the applicants have been promoted three times during their career, the MACP Scheme is not applicable to them. The relevant provisions of MACP Scheme dated 19.5.2009 in so far as the case of the applicants herein are as follows:

"i. No stepping up of pay in the pay band or grade pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACP Scheme (para 10 of OM dated 19.5.2009)

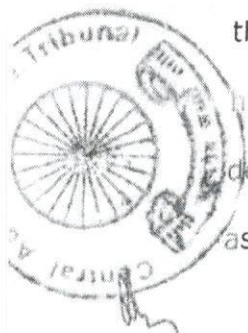
ii. Financial upgradation under MACPs shall be purely personal to the employees and shall have no relevant to his seniority position. As such there shall be no additional financial upgradation



for the senior employees on the ground that the junior employee in the grade has got higher pay/grade pay under MACPS(Clause 20 to Annexure I of MACPS)"

As seniority has no place under the Scheme and the juniors/subordinates were only granted financial upgradation on non-functional basis, the applicants cannot be granted any stepping up of pay on par with their juniors. When the MACP Scheme itself is not applicable to the applicants, the question of granting any stepping up of pay at par with their juniors/subordinates also does not arise. The next promotional post for a non-SOGE passed Senior Accountant is that of Supervisor, the Grade Pay of which is Rs.4800/- on par with the SOGE passed AAOs of the Department. However, the pay of the Senior Accountants who got second financial upgradation to the pay scale of Rs.6500-10500 prior to 1/1/2006 under the previous ACP Scheme was fixed at Grade Pay of Rs.4800/- in Pay Band 2 with effect from 1.1.2006 under the Revised Pay Rules. Consequently, on completion of 30 years of service, these Senior Accountants were granted Grade Pay of Rs.5400/- under the MACP Scheme.

4. As for the applicability of the orders of this Tribunal in OA 966 and 967 of 2009, it is the respondents' contention that although the order of this Tribunal was upheld by the Hon'ble High Court of Madras and SLP filed by the respondents before the Hon'ble Apex Court was also dismissed, the question of law has been left open. As the question of law has not been decided by the Hon'ble Apex Court, the orders of this Tribunal as well as the orders of the Hon'ble High Court could not be a



binding precedent to the case of the applicants. This Tribunal itself has, subsequently in a batch of OAs filed by similarly placed persons dismissed the case of the applicants therein on 31.10.2014. The Tribunal observed that neither the Hon'ble Apex Court nor the Hon'ble High Court of Madras rendered the Clause 8 of ACP/Clause 20 of MACPS as invalid or illegal. The Tribunal also cited the order of the Ernakulam Bench of this Tribunal dated 22.3.2013 in OA 1103 of 2011 wherein it was held that Clause 20 of the MACP Scheme was as valid and legal. Accordingly, the relief sought for the applicants therein for stepping up of pay on par with juniors was declined. The principle of equity is to be applied only in the case of promotion and not in the case of financial upgradations which are purely personal to the employees and have no relevance to their seniority position. Stepping up of pay under FR 22 is subject to the following conditions:

- i. Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same scale.
- ii. The scale of pay of lower and higher posts in which they are entitled to draw pay should be identical.
- iii. The anomaly should be directly the result of the application of FR 22C ie FR 22(1)(a)(1) provision.

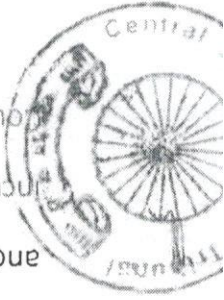
In the instant case, the juniors/subordinates have not been promoted to the post held by the applicants and therefore FR 22 cannot be invoked.

5. Heard Shri R. Muthukumarsamy, learned senior counsel for M/s. A. Jenaseeman for the applicants and Shri V. Vijay



Shankar, learned counsel for the respondents and perused documents including copies of the orders/judgments presented during hearing.

6. Learned Sr. counsel for the applicants argued that as the orders of this Tribunal in 2010 granting stepping up of pay to the applicants therein has been upheld by the Hon'ble High Court of Madras and the SLP thereon has been dismissed by the Hon'ble Apex Court, this Tribunal is bound to follow the ratio of those cases. Even if the Hon'ble Apex Court has left the question of law involved in the case open while dismissing the SLP, it does not mean that the question of law could be agitated before this Tribunal. When the question is left open by the Hon'ble Apex Court, it could only be decided by the Hon'ble Apex Court. In the meantime, the respondents are bound to follow the ratio of the order of this Tribunal which has already been implemented in the case of the applicants therein. The order of the Ernakulam Bench of this Tribunal or the subsequent order of the Madras Bench could not be invoked to reverse the ratio which has attained finality as far as this Bench is concerned. Even otherwise, quoting the order of the Ernakulam Bench dated 22.3.2013 to reject the claim of the applicants is not justified. The Ernakulam Bench in its order had observed that the Madras Bench had not taken into consideration the specific Clause of 20 of the MACP Scheme and to that extent the order of the Madras Bench was per incurium. However, the decision of the Hon'ble Madras High Court dated 19.3.2014 which confirmed the 29.12.2010 order



of the Madras Bench came subsequent to the Ernakulam Bench of this Tribunal. The order of the Madras Bench dated 31.10.2014 quoting the Ernakulam Bench decision to reject the claim of the applicants therein who 'were similarly placed as the applicants herein did not take into account the confirmation by the Hon'ble Madras High Court of its previous order and therefore, the ratio of the order dated 31.10.2014 cannot override the ratio of the judgment rendered by the Hon'ble High Court of Madras.

7. Learned counsel for the respondents on the other hand drew our attention to Clause 20 of the MACP Scheme and argued that benefits are purely personal and had no relation to seniority. Secondly, the question of law on this issue has not been finally settled by the Hon'ble Apex Court and therefore, the respondents are justified in their stand that the benefits granted to the applicants in OA 996 and 997 of 2009 dated 29.12.2010 should be confined to the applicants therein.

8. Both the learned counsel drew our attention to the orders of various Benches of this Tribunal which supported their respective stand.

9. We have carefully considered situation arising out of said orders and the judgments of the Hon'ble High Court of Madras. The Hon'ble High Court of Madras in its order dated 19.3.2014 in W.P.Nos.18611 and 18612 of 2011 has comprehensively dealt with the issue. The following observations made by the Hon'ble Madras High Court in the said order are relevant:

"7.It is the vehement submission of the learned counsel appearing for the writ petitioners that in

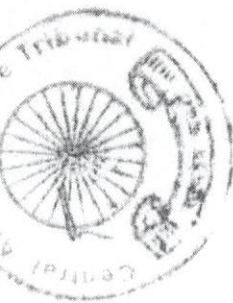


view of MACP Scheme which came into being in the year 2009, FR-22(1)(a)(i) has no application and since the private respondents 4 to 26 in the original applications are stagnated without any promotion, they have been rightly conferred with the benefit of pay grade of Rs.5,400/- and also contended that in the absence of any challenge to the said scheme, it is not open to the private respondents to attack the said benefit conferred on them. In the considered opinion of the Court, the said submission lacks merit and substance for the reason that any action of the State has to pass the test of reasonableness and shall not offend Article 14 of the Constitution of India.

11. The appellants herein, under the guise of MACP Scheme dated 19.5.2009 coupled with the clarification dated 09.11.2009 seek to deprive the benefit of FR-22(1)(a)(i) to the private respondents and in the considered opinion of the Court, it is unsustainable as it violates equality and it also offends Article 14 of the Constitution of India and the MACP Scheme dated 19.05.2009 as well as the impugned order dated -3.08.2009 do not spell out any reason the applicability of FR-22(1)(a)(i) has excluded for the persons like private respondents who are ultimately aggrieved/affected.

12. The Government of India passed series of orders issuing clarification in respect of FR-22(I(a)(i) and as per Clarification No.23(d), the pay anomaly should be directly as a result of the application of the provisions of Fundamental Rule 22 or any other rule or order regulating pay fixation of such promotion in the revised scale.

13. In the case on hand, the private respondents 4 to 26 in the original applications are admittedly juniors to the private respondents in these writ petitions and they did not qualify on time for getting their promotion and consequently got stagnated and on account of the same, they are not conferred with higher grade pay of Rs.5,400/-. The Tribunal has taken into consideration of the fact that admittedly the private respondents 4 to 26 did not pass the departmental tests on time and got stagnated at the level of Senior Accountants and since they have been conferred with higher grade pay of Rs.5,400/-, has rightly granted the said relief in their favour. It is to be pointed out at this juncture that the private respondents 4 to 26 in the original applications



have not been put to any prejudice and what the Tribunal done was, merely stepped up the pay scale of the original applicants to that of the private respondents 4 to 26 and it is in tune with the principle of parity and equity enshrined in Article 14 of the Constitution of India.

14. This Court, on a careful consideration of the rival submissions and scrutiny of the materials placed before it, is of the considered opinion that there is no error apparent or infirmity the reasons assigned by the Tribunal for allowing the original applications and finds no merit in these writ petitions.

15. Hence for the reasons assigned above, both these writ petitions are dismissed confirming the common order dated 29.12.2010 passed in O.A.Nos.966 and 967 of 2009 by the Central Administrative Tribunal, Chennai. The writ petitioners/appellants herein are directed to extend the benefit of MACP Scheme to the private respondents/applicants in original applications by fixing their grade pay at Rs.5,400/- with effect from the date on which the said benefit was conferred to the private respondents 4 to 26 in the original applications and the said exercise shall be completed within a period of eight(8) weeks from the date of receipt of a copy of this order."

10. We are in agreement with the learned counsel for the applicants that the decision of the Hon'ble Madras High Court in the Writ Petition Nos.18611 and 18612 of 2011 dated 19.3.2014 would prevail over all other orders till the law is settled by the Hon'ble Apex Court and, therefore, should be taken as binding precedent to the cases before us. The case of the applicants herein is similar to that of the applicants in OAs 966 and 967 of 2009. The main contention of the respondents that in view of Clause 20 of the MACP Scheme and the provisions of FR 22 no relief could be granted to the seniors has been adequately dealt with in the Writ Petitions before the Madras High Court. Therefore, we have no



hesitation in granting the relief to the applicants in these two applications. The respondents are accordingly directed to extend the benefits under the MACP Scheme to the applicants and fix their Grade Pay at Rs.5,400/- on par with their juniors/subordinates, from the date on which such benefit was conferred on the juniors. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

11. Both the Original Applications are allowed in the above terms. In the circumstances, there shall be no order as to costs.

"Free Copy U/R 22 of
CAT (Procedure) Rules"

/ TRUE COPY /
K. Krishnamm
SECTION OFFICER 6/10/15

