

**CENTRAL ADMINISTRATIVE TRIBUNAL****CALCUTTA BENCH**

OA No. 350/001476/2019

MA 352/00859/2019

1. Raj Kumar Sen, Son of Late M. M. Sen, aged about 71 years, at present residing at 70/2, M. N. K. Road, Kolkata - 700036.
2. Chandra Sekhar Mukhopadhyay, S/o Late T.N. Mukhopadhyay, aged about 71 years, at present residing at Vill & Post: Bancheegram, Hooghly.
3. Dipak Kumar Gargari, S/o Late Bejoy Kumar Gargari, aged about 72 years, at present residing at 11, P. K. Chatterjee Lane, P.O. Rishra, Dist. Hooghly, Pin - 712248.
4. Amales Chandra Majumdar, S/o Late Bhabanath Majumdar, aged about 72 years, at present residing at Jagacha, P.O. G.I.P. Colony, Dist. Howrah, W. B. Pin - 711112.
5. Mridula Roychowdhury, wife of Late S.B. Roychowdhury, aged about 72 years, at present residing at 377/N, Dr. A. K. Pal Road, Kolkata - 34.
6. Swarna Kamal Dhar, S/o Late Satya Charan Dhar, aged about 73 years, at present residing at 17/1/4, Beleghata Main Road, Kolkata - 700010.
7. Ranu Biswas, W/o Narendra Nath Biswas, aged about 71 years, at present residing at 83, Kasto Danga Road, Sarsuna, Kolkata - 700061.

8. Gouri Banerjee, W/o Late S. K. Banerjee, aged about 71 years, at present residing at 18, Ram Gopal Pal Road, Sarsuna, Kolkata - 700061.
9. Sarmistha Sengupta, W/o. Sushil Kr. Sengupta, aged about 72 years, at present residing at 20/3, Baishnab Ghata Bye Lane, P.O. Naktala, Kolkata - 700047.
10. Bimal Krishna Roy, S/o Late Debendra Chandra Roy, aged about 73 years, at present residing at 3 No. Govt. Colony, Sodepur, 24 Parganas (North) Pin - 700110.
11. Purnima Das, W/o Shri Shyamal Kumar Das, aged about 71 years, at present residing at 68/13, Jessor Road, Kolkata - 700074.
12. Rama Basu, W/o Pradip Kumar Basu, aged about 71 years, at present residing at 26/3, N. C. Sen Lane, Salkia, Howrah.
13. Sima Roy, W/o Pulak Ranjan Roy, aged about 72 years, at present residing at 162/A/47, Lake Gardens, Kolkata - 700045.
14. Golak Kumar Mukherjee, S/o Late J. Mukherjee, aged about 71 years, at present residing at 46/A/33/2/3, Shibpur Road, Howrah - 711102, P.O. Shibpur Bazar, Howrah.
15. Sambhu Nath Bagani, S/o Late R. C. Bagani, aged about 72 years, at present residing at P.O. + Vill. Maheshtala (Binapani), Dist. 24 Pgs (S), Kolkata - 700141.
16. Madhab Chandra Nandi, S/o Late P. M. Nandi, aged about 71 years, at present residing at 4/48A, Bijoygarh, Kolkata - 700032.

17. Prasanta Kumar Das, S/o Late Kanailal Das, aged about 70 years, at present residing at 3/1, Dinabandhu Mukherjee Lane, Shibpur, Howrah - 2.
18. Mira Mitra, W/o Pradyot Kr. Mitra, aged about 71 years, at present residing at Vill. West Hridaypur, P.O. Hridaypur, Dist. 24 Pgs (W).
19. Santi Gopal Das, S/o Late Srish Chandra Das, aged about 71 years, at present residing at 325/172, Nandan Kanan(E), Rahara, 24 Pgs (N), Pin - 700118.
20. Tapan Kumar Mukherjee, S/o Late Haran Chandra Mukherjee, aged about 50 years, at present residing at 25/B, Collage Road, P.O. Nabagram, Dist. Hooghly, Pin - 712246.
21. Himangshu Bhusan Indu, S/o Late Phani Bhusan Indu, aged about 73 years, at present residing at R/26, Kamdahari, Purbapara, Garia, Kolkata - 700084.

All the applicants have retired from service while working as Sr. Accountant under the overall control of the General Manager, (Postal Accounts & Finance).

Applicants

- Vs -

1. Union of India through the Secretary, Department of Posts, Ministry of Communications and I.T., Government of India, Dak Bhawan, Sansad Marg, New Delhi - 110001.
2. Chief Post Master General, West Bengal Circle, Yogayog Bhawan, Kolkata - 700012.
3. Post Master General, Kolkata Region, West Bengal Circle, Yogayog Bhawan, Kolkata - 700012.

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4. The General Manager,<sup>4</sup> (Postal Accounts & Finance)  
Yogayog Bhawan, Chittaranjan Avenue, Kolkata.  
700012
5. Secretary, Govt. of India, Ministry of Personnel, P.G. and Pensions,  
Department of Personnel & Training, North Block, New Delhi -  
110001.
6. Deputy Secretary to the Govt. of India, Ministry of Personnel, P.G.  
and Pensions, Department of Personnel & Training, North Block,  
New Delhi - 110001.

.. Respondents

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH  
KOLKATA  
M.A.350/00859/2019  
O.A. No.350/01476/2019.

Date of order : This the 13<sup>th</sup> Day of January, 2020.

**Hon'ble Mrs. Bidisha Banerjee, Judicial Member**



Raj Kumar Sen & Ors.....Applicant

Vs

Union of India & Ors. ....Respondents

Advocate for the Applicants : Mr C. Cinha

Advocate for the respondents : Mr K. Prasad.

**ORDER (ORAL)**

**MS BIDISHA BANERJEE, MEMBER(J)**

Applicants in this O.A have sought for the following reliefs ;

- a) To direct the respondents to grant the applicants 3<sup>rd</sup> Financial Upgradation under the MACP Scheme in Grade Pay of Rs.4600/- w.e.f. 01.01.2006 with all consequential benefits including Revision of Pension and other settlement dues.
- b) To direct the respondents to grant the applicants benefit of judicial pronouncements as highlighted in Paragraph 4.6 of the instant original application being similarly placed and similarly circumstanced and to grant the 3<sup>rd</sup> Financial Upgradation under the MACP Scheme in GP of Rs.4600/- with all consequential benefits including Revision of Pension and other Settlement dues.
- c) To direct the respondents to modify and/or amend the date of operation of the MACP Scheme from 01.09.2008 to 01.01.2006 in terms of the dictum of Hon'ble Apex Court in the case of Union of India & Ors. -vs- Balbir Singh Turn & Anr. and Order dated 15.10.2018 passed by the Hon'ble Bombay High Court in the case of M.P.Joseph vs. Union of India & 3 Ors.
- d) Liberty be granted under Rule 4(5)(a) of CAT (Procedure) Rules, 1987 to file and maintain the Original Application jointly.
- e) Any other order or orders as the Hon'ble Tribunal deems fit and proper.

2. An M.A bearing No.859/2019 arising out of this O.A has been filed by the applicants praying for liberty to jointly pursue this application under Rule 4(5) (a) of CAT (Procedure) Rules, 1987. On being satisfied that the

applicants share common interest and are pursuing a common cause of action, they are permitted to jointly pursue this O.A. subject to payment of individual court fees. The M.A is disposed of accordingly.

2. The applicants have therefore claimed MACP benefit with effect from 01.01.2006 which according to them is permissible in view of the decision rendered by Hon'ble Apex Court in Union of India & Ors. vs Balbir Singh Turn & Anr., (2018) 11 SCC 99, wherein the Hon'ble Apex Court held as under :

*"We are only concerned with the interpretation of the Resolution of the Government which clearly states that the recommendations of 6th CPC as modified and accepted by the Central Government in so far as they relate to pay structure, pay scales, grade pay etc. will apply from 01.01.2006. There may be some gainers and some losers but the intention of the Government was clear that this Scheme which is part of the pay structure would apply from 01.01.2006. We may also point out that the Resolution dated 30.08.2008 whereby the recommendation of the Pay Commission has been accepted with modifications and recommendations with regard to pay structure, pay scales, grade pay etc. have been made applicable from 01.01.2006. This is a decision of the Cabinet. This decision could not have been modified by issuing executive instruction. The letter dated 30.05.2011 flies in the face of the Cabinet decision reflected in the Resolution dated 30.08.2008. Thus, administrative instruction dated 30.05.2011 is totally ultra vires the Resolution of the Government."*

Applicants claim, that for parity of reason they ought to be extended the benefit of the said decision. As a matter of policy the MACP Scheme was introduced w.e.f. 01.08.2009.

3. Per contra, the respondents have stated that DOPT vide its O.M dated 01.11.2019 has clarified that the benefit of MACP Scheme from 01.01.2006, when the Scheme itself came into effect on 01.08.2009 is not admissible. The reasons being reflected as under :

*"(i) The matter relating to grant of benefits w.e.f. 1.1.2006 under MACP Scheme to civilian employees is subjudice before the Hon'ble Supreme Court of India in SLP Nos.10811-10813/2018 in the matter of Union of India Vs. Shri Ranjit Samuel which has been filed by MOD against the*

order dated 14.02.2017 of Hon'ble High Court of Judicature at Madras in Writ Petition Nos.33946,34602 and 27798 of 2014, wherein Madras High Court held that the benefit of erstwhile ACP Scheme cannot be negated by bringing a new Scheme i.e. MACP Scheme with retrospective effect. subsequently, O/o C&AG have also been advised to file SLP against the order of Bombay High Court in a similar matter. This SLP of O/o C&AG and other similar matters have been tagged with SLP No.10811-10813/2018 and are being heard together by the Apex court.



(ii) Further, the 6th Pay Commission recommended separate Schemes for civilian and the Defence Personnel. After the recommendations were considered and approved by the Cabinet, D/o Expenditure issued Resolution dated 29.08.2008 in respect of civilian employees. M/o Defence issued Resolution dated 30.08.2008 regarding extension of 6th CPC benefits to Armed Forces Personnel. Thus the Civilian and the PBOR personnel are governed by two different Resolutions.

(iii) The recommendations of the 6th CPC were accepted by the Government only on 29.08.2008 (30.08.2008 in case of PBOR). The recommendations of the 6th CPC were required to be examined and a Scheme was to be formulated in consultation with Department of Expenditure and the same took considerable time for its implementation. Before implementation of the Scheme, a cut off date had to be decided/fixed. Accordingly, the Government has taken a conscious decision for implementing the MACPS w.e.f. 01.09.2008. Though the MACPS came into existence only w.e.f. 01.09.2008, the benefits of the existing ACP Scheme of August, 1999, was allowed to the Government servants upto 31.08.2008.

(iv) Changing the effective date of implementation of MACP from 01.09.2008 to 01.01.2006 may be beneficial to certain employees, but this would also place certain other employees at a disadvantage thereby entailing huge recoveries from them. It may be difficult to make recoveries from the employees who have availed higher financial benefit under ACP during 01.01.2006 to 31.08.2008 and retired from service."

(v) The MACP is a condition of service and, hence, cannot be given retrospective effect. It is upto Government to take a conscious decision to implement it uniformly from a certain date.

(vi) It is not feasible to extend the benefits of MACP during 01.01.2006 to 31.08.2008, as more than nine years of time has passed since the implementation of MACP and the issues have been settled as per extant instructions. The change of effective date will lead to surge of litigation

particularly from employees who availed the benefits of ACP Scheme during 01.01.2006 to 31.08.2008.

(vii) Vide order dated 14.02.2017, Hon'ble High Court of Judicature at Madras in Writ Petition Nos. 33946, 34602 and 27798 of 2014 has held that the benefit of erstwhile ACP Scheme cannot be negated by bringing a new Scheme i.e. MACP Scheme with retrospective effect."

4. I note that MACP Scheme has been affected to all Central Government employees with effect from 01.09.2008. if the same is allowed to be effected from an earlier date (01.01.2006 for the present applicants who have already retired from service before 01.09.2008) that would create an absolute anomalous situation and would result in discrimination to a good number of Government employees who have been granted benefit with effect from 01.09.2008. This if allowed would itself open a flood gate of litigations. Hence, I reject the contention of the applicants as prayed for in this O.A giving them liberty to seek such benefit in the event the Hon'ble Apex Court's decision in SLP Nos. 10811-10813 of 2018 in **Union of India vs. Shri Ranjit Samuel** against a Madras High Court decision as referred to in the DOPT O.M. dated 01.11.2019 is otherwise.

5. O.A is accordingly dismissed. No order as to costs.

**(BIDISHA BANERJEE)**  
**MEMBER (J)**

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