

**Central Administrative Tribunal  
Principal Bench**



OA No. 2806/2016  
MA No.2518/2016

Order reserved on : 04.02.2020  
Order pronounced on: 26.02.2020

***Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)  
Hon'ble Mr. Pradeep Kumar, Member (A)***

1. All India Association of Central Excise Gazetted Executive Officers, Delhi Through its General Secretary Mr. Ravi Malik Having its office at:  
B-59, CR Building, New Delhi.
2. Mr. Ravi Malik  
S/o Sh. Mahabir Singh  
R/o 9/638, R.K.Puram, New Delhi  
Presently holding the post of Superintendent  
Posted at Technical Branch, CE Commissionerate  
Delhi-I, CR Building, New Delhi  
Aged 54 years.
3. Mr. Sudesh Kumar  
Son of Sh. Diwan Chand  
R/o 31/10 Old Rajender Nagar, New Delhi  
Presently posted as Commssioner ICD (Export),  
ICD (TKD), Aged about 58 years.
4. Mr. Ajai Shukla  
Son of late Sh. Ram Shanker Shukla  
R/o 307, Laxmi Bai Nagar, New Delhi-23.  
Aged about 54 years  
Presently posted as Superintendent in IGI Airport  
New Delhi.
5. Mr. Chhidda Singh Sharma  
S/o late Sh. M.R.Sharma  
R/o 9/768, Lodhi Colony, New Delhi-3  
Aged about 53 years  
Presently posted as Superintendent Central  
Excise, Audit-I Commissionerate CR Building,  
New Delhi.



6. Mr. Harsh Sood  
S/o Chander Kishore Sood  
R/o C9/9802, Vasant Kunj, New Delhi-17  
Aged about 55 years, presently posted as  
Supdt. At Commissioner CBCE.
7. Mr. R.P.Mittal  
Son of late Sh. Sri Ram Mittal  
R/o A2/21, Jeevan Jyoti Apartment, Pitampura,  
Presently posted as Superintendent in the Office of  
Commr. Of Service Tax, Delhi-IV,  
Plot No.37-38, Sector-32, Gurgaon  
Aged about 54 years.

... Applicants

(By Advocate: Ms. Jasvinder Kaur)

## **VERSUS**

1. Union of India through  
Revenue Secretary,  
Ministry of Finance,  
North Block, New Delhi.
2. Chairman,  
CBEC,  
North Block,  
New Delhi.
3. Chief Pay & Accounts Office,  
Ministry of Finance,  
North Block,  
New Delhi.
4. Department of Expenditure,  
Ministry of Finance  
Through its Secretary,  
North Block,  
New Delhi.
5. Department of Personnel & Training,  
Through its Secretary,  
North Block,  
New Delhi.

... Respondents

(By Advocate: Sh. Rajesh Katyal)



## **ORDER**

**By Hon'ble Mr. Pradeep Kumar, Member (A)**

Applicant No.1 is said to be the recognized Association of Customs and Excise Gazetted Executive Officers and its Members are from the rank and post of Superintendent and above. Applicant No.2 is a Superintendent and is the Secretary of said Association. Other applicants are also working as Superintendent. The Superintendent having four year regular service, were to be granted the Non-Functional Upgradation (NFU).

2. With a view to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues, Central Government promulgated an Assured Career Progression (ACP) Scheme on 09.08.1999. This envisaged two financial upgradations on completion of 12 and 24 years of service, if one was not promoted in the meanwhile. Such financial upgradation was to be in the pay scale for the next higher post as per departmental hierarchy.

The applicants were recruited as Inspectors. Next promotion lied to the post of Superintendent and thereafter as Assistant Commissioner in scale Rs.8000-13500 (in 5<sup>th</sup> CPC).

3. The 6<sup>th</sup> CPC recommendations were notified on 29.08.2008 and came into being w.e.f. 01.01.2006. With this



the Superintendents were granted the replacement scale of PB-2 + Grade Pay (GP) Rs.4800 (Rs.9300-34800 + GP Rs.4800). Vide notification dated 01.01.2008, it was also notified that those having four years regular service in PB-2 + GP Rs.4800, shall be granted the NFU of PB-2 + GP Rs.5400 w.e.f. 01.01.2006. Thus, some of the applicants came to be granted the pay scale of Rs.PB-2 + GP Rs.5400 by 31.08.2008.

4. The ACP Scheme was modified and another scheme known as Modified Assured Career Progression (MACP) Scheme was notified on 19.05.2009 and it came into being w.e.f. 01.09.2008. This envisaged total three financial upgradations at 10/20/30 years of service, if someone was not promoted in the meanwhile. However, there was a difference vis-à-vis ACP. The financial upgradation under MACP was to be given in the next higher pay scale as per hierarchy of pay scale. This is very distinct from pay scale applicable to next higher post as per departmental hierarchy as per earlier ACP Scheme.

It needs to be recalled here that as per MACP policy directives, the pay scale PB-2 + GP Rs.5400 and PB-3 + GP Rs.5400 are two distinct pay scales despite carrying same GP and the later is the next higher scale to the former.



5. Since the applicants had already been promoted to the post of Superintendent which was the first promotion, the 1<sup>st</sup> ACP was already offset. Thereafter, they were due for the second ACP. However, before 2<sup>nd</sup> ACP could be granted the new MACP Scheme came into being w.e.f. 01.09.2008. By this time, the NFU of PB-2 + GP Rs.5400 was already granted to some applicants (Rs.9300-34800 + GP Rs.5400). However, since this NFU was not a promotion, it did not count for 2<sup>nd</sup> ACP, which was in force till 31.08.2008.

Therefore, 2<sup>nd</sup> MACP, in lieu of 2<sup>nd</sup> ACP, still remained due. Accordingly, they were granted the next higher pay scale of PB-3 + GP Rs.5400 scale (Rs.15600-36100 + GP Rs.5400) as 2<sup>nd</sup> MACP when it was due.

6. The applicants are aggrieved that they were already in PB-2 + GP Rs.5400 before this 2<sup>nd</sup> MACP, i.e., in GP Rs.5400 and therefore, were required to be granted 2<sup>nd</sup> MACP to the still higher GP of Rs.6600, i.e. PB-3 + GP Rs.6600 instead of PB-3 + GP Rs.5400.

7. Applicants rely on the decision in OA No.280/2012 (**S.Balakrishnan vs. Union of India**) which was allowed vide order dated 22.07.2013 by Madras Bench of this Tribunal. This was challenged before the Hon'ble High Court of Madras in WP No.11535/2014 (**UOI vs. S.Balakrishnan**). The Hon'ble High Court dismissed the writ vide order dated



16.10.2014. This was challenged in SLP No.15396/2015 which was also dismissed vide order dated 31.08.2015. Thus, order by CAT was upheld.

While passing this judgment, CAT and Hon'ble High Court made some observation about para 8 and 8.1 contained in Annexure-I of MACP policy directives issued on 19.05.2009. Applicants rely on these observations also.

8. Applicants also rely on the WP No.19024/2014 (**R.Chandrasekaran vs. CAT and others**). In this case, Sh. R.Chandrasekaran was aggrieved with dismissal of his OA No.675/2013 earlier by Tribunal vide orders dated 24.02.2014 and had filed this writ. This Writ Petition was disposed off vide order dated 24.02.2014. The Hon'ble High Court ordered for review of policy directives on MACP by DOP&T.

In compliance DOP&T was consulted and CBDT issued directions vide letter dated 26.05.2015 granting certain benefits in this case. Applicants claim that these directives cover instant case also.

9. Applicants also rely on judgment in OA No.210/2016 (**S.Purushothaman vs. CBDT**) which was delivered by this Tribunal on 01.03.2016. While allowing this OA, the Tribunal relied upon the judgment in **R.Chandrasekaran** by Hon'ble



High Court (para 8 supra) and follow up CBDT order dated 26.05.2015.

10. Thus, the leading case relied upon by applicants is OA No.280/2018 (para 7 supra) and WP No.19024/2014 (para 8 supra).

11. Therefore, the applicants' contentions are summarized as under:

(a) The clause 8 and 8.1 of MACP Scheme dated 19.05.2009 have been interpreted by CAT Madras and Hon'ble High Court of Madras and this was upheld by Hon'ble Apex Court (para 7 supra).

(b) Accordingly, grant of PB-3 + GP Rs.5400 from PB-2 + GP Rs.5400 cannot be counted as financial upgradation under MACP. In this regard, they also rely on the ratio of logic of grant of Grade Pay to Sh. R.Chandrasekaran in para 8 above. Accordingly, they plead to be granted 2<sup>nd</sup> MACP to the next higher pay scale of PB-3 + GP Rs.6600.

12. The relief sought is to quash the Office Order dated 20.06.2016 which reads as under:

“Subject: Clarification of MACP – Grant of 3<sup>rd</sup> MACP to the Superintendents in CBEC who were granted non-functional grade pay of Rs.5400/- in Pay Band-2-Reg.

Sir/Madam,

I am directed to say that the Board is in receipt of various references/representations from field officers/officers seeking clarifications on the issue of grant of 3<sup>rd</sup> financial



upgradation under MACP Scheme to Superintendents who were granted non functional grade pay of Rs.5400/- in pay Band-2.

2. The matter regarding counting of non functional Grade pay of Rs.5400/- in Pay Band-2 to the Superintendents as one financial upgradation for the purpose of MACP Scheme has been re-examined in consultation with **Department of Personnel & Training (DoP&T)**. **DoP&T has now advised in consultation with Department of Expenditure that the grant of non functional grade pay of Rs.5400/- in pay Band-2 to the Superintendents needs to be counted as one financial upgradation for the purpose of MACP Scheme.** DoP&T has drawn attention to the specific Para 8.1 of O.M. No.35034/3/2008-Estt.(D) dated 19<sup>th</sup> May, 2009 read with FAQ No.16 (copy enclosed) which indicates that the Non functional grade pay of Rs.5400/- in PB-2 is to be treated as a financial upgradation under MACP Scheme. DoP&T has also advised that court cases including the case of R.Chandrasekeran may be agitated/defended as per MACP Scheme vide DoP&T O.M. dated 19/05/2009.

3. The Board's letter of even number dated 26.05.2015 addressed to Chief Commissioner of Central Excise, Chennai Zone in the case of Shri R.Chandrasekaran has been treated as withdrawn.

4. All Cadre Controlling Authorities are requested to take appropriate action to settle MACP cases accordingly. Also, appropriate action may be taken to defend the cases emerging out of the case of R.Chandrasekaran, on behalf of Union of India.

5. This issues with the approval of Chairman, CBEC."

(Emphasis supplied)

Relief is also prayed in the form of direction to respondents to grant next MACP, without counting the time scale granted prior to 01.09.2008 on completion of four years regular service as Superintendent, in light of direction by Hon'ble High Court of Madras in Writ Petition No.19024/2014 (para 8 supra) and in Writ Petition No.11535/2014 and by Hon'ble Supreme Court in SLP No.15136/2015 (para 7 supra), whereafter CBDT order dated 26.05.2015 was issued



(para 8 supra), with all consequential benefits. Certain other reliefs are also sought.

13. *Per contra*, respondents opposed the OA. It is pleaded that certain clarifications were sought from Ministry of Finance in relation of MACP. These were provided vide Ministry of Finance letter dated 25.02.2011 in consultation with DOP&T. This reads as under:

“2. The Department of Personnel & Training has finally advised as under:-

“It may be clarified that, prior to introduction of MACPS, the benefits of 1<sup>st</sup> and 2<sup>nd</sup> financial upgradations under the ACPS of August, 1999 had been granted in the promotional hierarchy w.e.f. 9.8.1999 or on completion of 12 and 24 years of regular service. The benefits of ACPS of August, 1999 had been allowed till 31.08.2008. However, as per the recommendations of 6<sup>th</sup> CPC, three financial upgradations have been allowed under MACPS w.e.f. 1.9.2008 or on completion of 10, 20 and 30 years of continuous regular service, whichever is later, in the immediate next higher grade pay in the hierarchy of recommended revised pay bands and grade pay as prescribed in the CCS (RP) Rules, 2008 provided that the Government official has not earned three promotions during the period.

The pay structure on the recommendations of 6<sup>th</sup> CPC has been made effective w.e.f. 01.01.2006 vide Department of Expenditure's Notification dated 29.8.2008. **The benefits of financial upgradation in the promotional hierarchy under the ACPS have, however, been allowed in the revised pay structure during the period between 1.1.2006 and 31.8.2008 in terms of clarification given on point of doubt no.3 of Annexure of DOPT's O.M. dated 9.9.2010.**

As per the recommendations of 6<sup>th</sup> CPC, Superintendents in Department of Revenue with four years of regular service in that grade are eligible for Non-functional Grade in the grade pay of Rs.5400 in PB-2 in the corresponding pay band w.e.f. 01.01.2006.

**The benefits of ACPS of August 1999 have been allowed till 31.08.2008 and only functional promotion(s) is/are counted for the purpose of**



**Scheme. Besides, there is no provision for counting of 'Non-functional scale' for the purpose of ACPS.**

**In view of the above facts and circumstances, there would be no effect on grant of 'Non-functional scale' in the PB-2 with grade pay of Rs.5400 during the period between 1.1.2006 to 31.8.2008, as the same is not counted under ACPS and it would not be offset against financial upgradation under the Scheme. However, in terms of para 8.1 of Annexure of MACPS, financial upgradation granted in the grade pay of Rs.5400 in PB-2 and PB-3 would be counted separate upgradation and would be offset against financial upgradation under the Scheme."**

(Emphasis supplied)

Thereafter, issue was again examined in consultation with DOP&T who rendered their advice in compliance to orders in WP No.19024/2014 whereafter order dated 26.05.2015 was issued (para 8 supra).

Subsequently, matter was again reviewed and clarification was issued on 20.06.2016 in consultation with DOP&T wherein the order dated 26.05.2015 was also withdrawn (para 12 supra).

14. The respondents also rely upon following judgments:

(i) Decision of Ernakulam Bench of the Tribunal in OA No.00916/2016 decided on 12.04.2019 (**Dileep Kumar vs. UOI**).

In this OA, it was pleaded that applicant is a Superintendent of Central Excise. He joined the service under the respondents as Inspector of Central Excise. He was



granted 1st and 2nd financial upgradations w.e.f. 9.8.1999 and 22.6.2008. He was promoted to the post of Superintendent of Central Excise w.e.f. 24.9.2002 and as the upgradation benefits were already given under ACP scheme he was not eligible for any benefits at the time of promotion. The applicant was already granted the Grade Pay of Rs. 5,400/- in PB-2 of Rs. 9,300-34,800/- w.e.f. 24.9.2006 on completion of four years of service as Superintendent. Since the applicant was not granted any further promotion he is eligible for 3rd financial upgradation under the MACP scheme. Applicant submitted a representation to the respondents in this regard and sought upgradation to PB-3 + GP Rs.6600 relying upon the judgment by Hon'ble High Court of Madras (para 7 supra). Since this was denied, he preferred this OA.

The OA was dismissed. The operative part of judgment reads:

“7. Financial upgradations under the schemes of ACP and MACP are policy decisions of the Government of India and they are to be implemented strictly in terms of the schemes. Any interpretation inconsistent with the scheme cannot be acceded to. Paragraph 8.1 of the MACP scheme as quoted above which in unambiguous terms state that Grade Pay of Rs.5400/- in PB2 and the Grade Pay of Rs.5400 in PB-3 are to be treated as separate Grade Pays for the purpose of grant of financial upgradation under the MACP Scheme. In the 6th CPC revised pay structure after completion of 4 years of service in the PB-2 with Grade Pay of Rs. 4,800/- a higher Grade Pay of Rs.5400/- is granted in Pay Band-2 itself. As per para 8.1 of the MACP scheme such placement in higher Grade Pay has to be treated as a separate Grade Pay for the purpose of MACP Scheme.



Therefore, the applicant had already undergone 3 financial upgradations. Hence now the applicant cannot be considered for the 3rd financial upgradation as it would be contrary to the MACP Scheme. Ignoring the granting of non-functional Grade Pay of Rs.5400/- in PB-2 for the purpose of MACP is not in accordance with the government policy and hence is not correct.”

(ii) Decision of Principal Bench of this Tribunal in OA No.4134/2014 decided on 11.12.2019 (**Rajender Prasad Sharma vs. NDMC**). In this OA, the applicant was drawing PB 2 plus Grade Pay of Rs.5400, i.e., Rs. 9300-34800 plus Grade Pay Rs. 5400. On being granted his MACP benefits, he was granted the Pay Scale of PB 3 plus Grade Pay, i.e., Rs. 15600-39100 plus Grade Pay Rs. 5400. The applicant pleaded that once he was already in the Grade Pay of Rs. 5400, he is required to be given PB-3 + GP Rs.6600 as 3<sup>rd</sup> MACP. He also pleaded that similar benefits has been given to some other employees by SDMC vide order dated 28.07.2015.

This OA was dismissed. The operative part of judgment reads:

“4. The extent policy directives in respect of MACP indicate that financial upgradation is to be granted to the next higher pay scale as per the hierarchy of the pay scales recommended by the 6th CPC. **As per this hierarchy of pay scales, the next pay scale after PB 2 + GP 5400 is PB 3 + GP 5400. Accordingly, once somebody is already working in PB 2 (Rs. 9300-34800) + Grade Pay Rs. 5400, MACP lies to the next higher scale PB 3 (Rs.15600-39100) + Grade Pay Rs. 5400. This cannot be faulted.**

**5. The grievance of the applicant can be adjudicated only in accordance with the policy directives for MACP, which are very clear. In case the SDMC has**

**done some mistake in pay fixation under MACP, the same error cannot be perpetuated in case of others including the applicant.**

6. The grievance of the applicant is without any basis. Accordingly, OA is dismissed. No order as to costs.”

(Emphasis supplied)

It was pleaded that the instant OA is also without any

merit and needs to be dismissed.

15. Matter has been heard at length. Ms. Jasvinder Kaur, learned counsel represented the applicants and Sh. Rajesh Katyal, learned counsel represented the respondents.

15.1 The applicants have also filed MA No.2518/2016 for joining together. For the reasons mentioned therein, and in the interest of justice, this MA is allowed.

16. At this stage, we may reproduce the observations made by Hon'ble Supreme Court in **Union of India vs. P.V.Hariharan**, [(1997) 3 SCC 568]:

“Before parting with appeal, we feel impelled to make a few observations. **Over the past few weeks, we have come across several matters decided by Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a pay Commission.** Change of Pay scale of a category has cascading effect. Several other categories similarly situated, as well as those situated above the below, put forward their claims on the basis of such change. The Tribunal should realises that interfering with the prescribed pay scales is a serious matter. The pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal





work" is all being mis- understood and mis-applied, freely revising and enhancing the pay scales across the board. **We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales.** We have come across orders passed by single Members and that too quite often Administrative Members, allowing such claims. These orders have a serious impact on the public exchequer too. it would be in the fitness of the things if all matters relating to pay Scales, i.e. matters asking for a higher pay scale or an enhanced pay scale, as the case may be none or the other ground, are heard by a Bench comprising at least one Judicial Member. The Chairman of the Central Administrative Tribunal and the Chairmen of the State Administrative Tribunals shall consider issuing appropriate instructions in the matter."

(Emphasis supplied)

The grievance raised in this OA, has been examined keeping in view the ratio and constraints of above judgment by Hon'ble Apex Court.

17. The salient features of **S.Balakrishnan and others** in OA No.280/2012 (para 7 supra) as noted in that judgment read as under:

"2. The facts of the case are that the applicants herein joined the services in the second respondent department as direct recruit Asst. Enforcement Officers during 1975-76 and they have retired in the cadre of Asst. Directors during 2011 and 2012. **The first applicant was granted second financial upgradation under Assured Career Progression (ACP) Scheme w.e.f.29.11.2000 after completion of 24 years of service** under the scale of Rs.7500-200-12000 which was later on revised. **He was granted the third Modified Assured Career Progression (MACP) Scheme in the Grade Pay of Rs.6600/- under Pay Band 3 (PB 3) w.e.f. 01.09.2008.** Similarly, the second applicant was given the second financial **upgradation under Assured Career Progression (ACP) Scheme w.e.f. 02.08.2000 after completion of 24 years of service** and **he was granted the third Modified Assured Career Progression (MACP) Scheme in the Grade Pay of Rs.6600/- under Pay Band 3 (PB 3) w.e.f. 01.09.2008 wide order dt.17.11.2009.** The third



applicant was also granted the **second financial upgradation under Assured Career Progression (ACP) Scheme w.e.f. 05.12.1999** after completion of 24 years of service and later on he was granted the **third financial upgradation under Modified Assured Career Progression (MACP) Scheme in the Grade Pay of Rs.6600/- under Pay Band 3 (PB 3) w.e.f. 01.09.2008 wide order dt.17.11.2009**. The above orders were rescinded by the second respondent vide order dt.27.12.2011 and a corrigendum was issued fixing in the Grade Pay of Rs.5400/- under Pay Band 3 pursuant to objections of the fifth respondent. Since all the applicants have retired and under the threat of non-process of their terminal benefits and pension papers, the applicants have refunded the alleged arrears viz., Rs.79826/- Rs.73996/- and Rs.47656/- under protest. On such refund, the first and second applicants were able to receive the terminal benefits whereas neither the terminal benefits nor the pension was sanctioned in respect of the third applicant....

xxx      xxx      xxx

5. From the records as well as the contentions urged on behalf of the respondents, it is seen that the pay was revised in terms of para 8.1 of Annexure I of OM dt.19.05.2009. In this connection, it is useful to refer paras 8 and 8.1 of the above OM which is extracted as hereunder.

8. Promotions earned in the post carrying same grade pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of MACPS.

8.1 Consequent upon the implementation of Sixth CPC's recommendations, grade pay of Rs.5400 is now in two pay bands viz., PB-2 and PB-3. The grade pay of Rs.5400 in PB2 and Rs.5400 in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under MACP Scheme.

A perusal of the above makes it clear that para 8.1 of the DOPT instructions is a corollary to para 8 and thus applicable only to the departments where the Recruitment Rules provides for promotion to the post carrying the same Grade Pay.....

Xxx      xxx      xxx

9. For the reasons stated above, the impugned orders dt.05.09.2011 and 27.12.2011 of the second and third respondents are quashed and there will be a consequential direction to the respondents to restore the earlier orders dt.17.11.2009 and 21.01.2010 granting the 3rd financial upgradation under MACP with grade pay of Rs.6600/- in PB3 (Rs.15600-39100) to the applicants and consequently their pension should be re-



fixed and to disburse all the terminal benefits arising there-from in addition to the repayment of the amount already recovered.”

This was challenged before Hon’ble High Court, who gave the following directions:

“18. The Central Administrative Tribunal correctly interpreted clauses 8 and 8(1) of the MACPS and quashed the impugned orders and restored the earlier orders granting benefit to respondents 1 to 3. Similar view was taken by the Central Administrative Tribunal, Chandigarh Bench in O.A.No.1038 of 2010 and it was upheld by the High Court of Punjab and Haryana by judgment dated 19 October 2011 in CWP No.19387 of 2011. We are therefore of the considered view that the impugned order does not call for interference by exercising the power of judicial review.”

This was challenged before Hon’ble Apex Court, who passed following directions:

“Delay condoned.

The special leave petition is dismissed.”

17.1 Accordingly, it is clear from above that there were no directions to quash para 8 and 8.1 of MACP policy or to order any review of this policy. Moreover, all the three applicants in this OA, were already granted 2<sup>nd</sup> ACP much earlier to promulgation of MACP directives. Accordingly, on implementation of MACP, 3<sup>rd</sup> MACP benefit was taken to be due and was allowed in the next higher pay scale of PB-3 + GP Rs.6600. Further, in respect of applicants therein the next promotion lied to the post of Assistant Commissioner which carried the pay scale of PB-3 + GP Rs.5400, as was



observed by Hon'ble Tribunal and upheld by Hon'ble High Court.

Therefore, the relief was granted to the three applicants therein who had already retired while the OA was filed. Accordingly, no ratio can be drawn in respect of instant OA.

18. The order passed by Hon'ble High Court of Madras in WP No.19024/2014 (para 8 supra), was relied upon by Madras Bench of this Tribunal while adjudicating OA No.210/2016 (para 9 supra). In compliance of Hon'ble High Court's direction, DOP&T had examined the issue and rendered certain advice, whereafter Department of Revenue, CBEC, Ministry of Finance passed an order dated 26.05.2015 allowing 3<sup>rd</sup> MACP to the pay scale of PB-3 + GP Rs.6600 to Sh. R.Chandrasekaran. This advice and the order have been reproduced in the judgment of OA No.210/2016 (para 9 supra). Same are reproduced below:

**“Advice by DOP&T**

The brief of facts provided by the referring Department are as below:

1. Shri R.Chandrasekaran joined the service of Customs and Central Excise Department in 4<sup>th</sup> June 1982 as directed recruit inspector.
2. He was promoted to the grade of Superintendent in April 2001.
3. **He was granted 2<sup>nd</sup> financial upgradation under ACP Scheme w.e.f. 04.06.2006 and placed in the pay scale of Rs.15600-39100 in PB-3 with grade pay of 5400.**
4. He got 3<sup>rd</sup> financial upgradation under MACP scheme w.e.f. 04.06.2012 on completion of 30 years of service but



the same was not allowed by PAO office raising an objection that the applicant and some others had been given Non functional grade of Rs.5400 in PB-2 as on 01.01.2006 which ought to be counted as financial upgradation under MACP Scheme.

The matter has been examined as per the facts provided by the referring Department and in terms of rules/provisions under the ACP/MACP Scheme. In this regard, it is stated that since Shri R.Chandrasekaran got only one promotion and 2<sup>nd</sup> ACP in the grade pay of Rs.5400/- in his service career prior to implementation of MACP Scheme w.e.f. 01.09.2008, he is entitled to the grant of 3<sup>rd</sup> MACP in the grade pay of Rs.6600/- under MACP Scheme w.e.f. 04.06.2012 on completion of 30 years of service.”

### **CBEC Order dated 26.05.2015**

“The issue has been examined in consultation with Department of Personnel & Training (Estd.D.). As directed by Hon’ble High Court, Madras vide order dated 0.12.2014 in Writ Petition No.19024 of 2014 & M.P.No.1 of 2014 filed by Shri R.Chandrasekaran DoP&T has opined that since Shri R.Chandrasekaran got only one promotion and 2<sup>nd</sup> ACP in the grade pay of Rs.5400/- in his service career prior to implementation of MACP Scheme w.e.f. 01.09.2008, he is entitled to the grant of 3<sup>rd</sup> MACP in the grade pay of Rs.6600/- under MACP Scheme w.e.f. 04.06.2012 on completion of 30 years of service. A copy of DoP&T’s opinion is enclosed.

You are, therefore, requested to implement Hon’ble High Court’s order dated 8.12.2014 and file compliance report before Hon’ble High Court, Madras Bench.”

18.1 It is clear from above that DOP&T had examined the issue and Sh. R.Chandrasekaran was granted 2<sup>nd</sup> ACP w.e.f 04.06.2006 and was placed in pay scale PB-3 + GP Rs.5400 which was the scale applicable for next higher post of Assistant Commissioner. Thereafter, the MACP directives came into effect on 01.09.2008. Thereafter, he was due 3<sup>rd</sup> MACP w.e.f. 04.06.2012 on completion of 30 years of service. This 3<sup>rd</sup> MACP lied to the next higher pay scale which was

PB-3 + GP Rs.6600 and was granted vide order dated 26.05.2015.



Since the event of grant of non-functional upgradation (NFU) on completion of four years of service, had already occurred prior to promulgation of MACP w.e.f. 01.09.2008, NFU granted earlier could not be counted towards MACP. This policy did not envisage withdrawal of benefits already earned upto 31.08.2008. And accordingly, OA was allowed.

19. As against this, the claim of applicants in instant OA is that NFU granted to the scale of PB-2 + GP Rs.5400, irrespective of date whether it was granted prior to 01.09.2008 when MACP came into being or later, should not count towards MACP, is totally against the ratio decided in these relied upon judgments as well as against the policy directives themselves. The date of grant of NFU has to play an important and distinguishing role vis-a-vis the case of Shri R.Chandrasekaran.

19.1 In this connection the stipulations made in para 8 and 8.1 of Annexure-I of MACP policy directives dated 19.05.2009, are very clear. These are reproduced below:

“8. Promotions earned in the post carrying same grade pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of MACPS.

8.1 Consequent upon the implementation of Sixth CPC’s recommendations, grade pay of Rs.5400 is now in two pay bands viz., PB-2 and PB-3. The grade pay of Rs.5400 in PB2 and Rs.5400 in PB-3 shall be treated as separate



grade pays for the purpose of grant of upgradations under MACP Scheme.”

Further, DOP&T has also issued certain clarifications as “Frequently Asked Questions (FAQs) on Modified Assured Career Progression Scheme”, when certain doubts were raised. Point No.16 reads as under:

	Point of Doubt	Clarification
16.	Whether 'Non-functional Scale' of Rs.8000-13500 (revised to grade pay of Rs.5400 in PB-3) would be viewed as one financial upgradation for the purpose of MACPS.	Yes, in terms of para 8.1 of Annexure-I of MACPS dated 19.05.2009.

19.2 It is very clear from above, that for the purpose of MACP, the pay scale PB-2 + GP Rs.5400 and PB-3 + GP Rs.5400 are two distinct pay scales and the later scale is the next higher scale to the former, despite carrying same GP of Rs.5400.

20. Further, this Tribunal does not find that there has been any hostile discrimination against applicants. This OA, therefore, has been decided in terms of extant policy directives in respect of ACP and MACP.

21. The initial recruitment of applicants was to the post of Inspectors. The next promotion was to the post of Superintendent which carried the pay scale of PB-2 + GP Rs.4800. With this promotion, the 1<sup>st</sup> ACP, which was due after 12 years, gets offset. They shall now be due for 2<sup>nd</sup> ACP



on completion of 24 years of total service, if they are not promoted in the meanwhile to the next higher post, namely, Assistant Commissioner which carries the pay scale of PB-3 + GP Rs.5400. However, in case they are promoted to the post of ACP prior to completion of 24 years, the second ACP shall also be offset.

The ACP Scheme was in operation w.e.f. 09.08.1999 and thereafter the new MACP Scheme was promulgated on 19.05.2009 to take effect from 01.09.2008. Accordingly, ACP Scheme continued to be in force upto 31.08.2008. Further, the MACP Scheme did not envisage withdrawal of any benefit which was already granted to an employee upto 31.08.2008. With this in view, different scenario will emerge in respect of different employees.

22. As per current instructions in force, the Superintendents with four years of regular service are to be granted the NFU to the pay scale of PB-2 + GP Rs.5400. Since this is NFU and not a promotion, it shall not count towards ACP benefit scheme which was in force until 31.08.2008. Accordingly, all such Superintendents who are already granted this NFU to the pay scale of PB-2 + GP Rs.5400 upto 31.08.2008, shall continue to be due for the 2<sup>nd</sup> ACP benefit.



However, since a new MACP Scheme had come into being w.e.f 01.09.2008, all those who were still due for the 2<sup>nd</sup> ACP as of 31.08.2008, shall now be taken to be due for 2<sup>nd</sup> MACP with effect from the date they complete 20 years of total service in case they are not promoted in the meanwhile. This second MACP shall lie to the next higher pay scale of PB-3 + GP Rs.5400 as per MACP policy directives dated 19.05.2009.

22.1 For such of the employees who were promoted as Superintendent and are granted the pay scale of PB-2 + GP Rs.4800 but have still not completed four years of service as of 31.08.2008, these employees shall be granted the NFU of PB-2 + GP Rs.5400 on completion of four years of service as Superintendent and since this grant of non-functional financial upgradation would have occurred after 01.09.2008, the same shall count towards 2<sup>nd</sup> MACP as per policy dated 19.05.2009 and with this, the 2<sup>nd</sup> MACP will get offset.

22.2 Once the 2<sup>nd</sup> MACP gets offset as explained above, they all (in para 22 as well as in 22.1 supra) shall be taken to be due for 3<sup>rd</sup> MACP benefit as per policy to the next higher pay scale, as applicable, on completion of total 30 years of service unless they are already promoted in the meanwhile.

23. Accordingly, the above OA is disposed off by directing the respondents to review the case of all the applicants in



terms of para 21 to 22.2 above and grant them such MACP and consequential benefit as may be due to them. If as a result of this exercise, certain arrears are found to be payable, these shall also be paid. However, these arrears shall not carry any interest.

This exercise shall be completed within a period of three months from the date of receipt of a certified copy of this order under advice to all applicants.

24. The CBEC letter dated 20.06.2016 (para 12 supra) does not make the distinction with respect to the date of grant of NFU to the pay scale of PB-2 + GP Rs.5400 and as the relevant date of 01.09.2008 makes a difference due to the respective ACP and MACP Scheme and as brought out in para 21 to 22.2 above. Accordingly, the respondents shall review this circular dated 20.06.2016, as a separate exercise and re-issue after incorporating changes as are considered necessary.

No order as to costs.

**( Pradeep Kumar)**  
**Member (A)**

‘sd’

**( Justice Vijay Lakshmi)**  
**Member (J)**