

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00939/2019

DATED THIS THE 11TH DAY OF FEBRUARY, 2020

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

T.No.2769, T/M
Anthony Swamy,
S/o Late Chennappa,
Aged 56 years,
515, Army Base Workshop,
Ulsoor,
Bengaluru-560 008.

....Applicant

(By Advocate Shri N.G. Phadke)

Vs.

1. The Union of India,
By its Secretary,
Ministry of Defence,
South Block, New Delhi-110 001.

2. Director of General of EME,
Army Head Quarters,
DHQ P.O,
New Delhi-110 011.

3. Commander
Head Quarters,
Base Workshop Group EME,
Meerut Cantt-250 001.

4. Commandant & Managing Director,
515 Army Base Workshop,
Bengaluru-560 008.

.....Respondents

(By Shri Gajendra Vasu, Counsel for the Respondents)

ORDER (ORAL)
(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. The matter relates to MACP and its implementation. The matter is covered by the order of the Hon'ble High Court at Bombay in Writ Petition No. 1763/2013, which we quote:

***"IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION NO. 1763 OF 2013

M. P. Joseph *... Petitioner*

Versus

Union of India and others *... Respondents*

.....

Mr. M. P. Joseph - Petitioner-in-person.

Mr. R.R. Shetty a/w Mr. Anand Singh for the Respondent Nos. 1 and 2.

Ms. Lata Patne a/w Mr. Vinod Joshi for Respondent No.4.

.....

***CORAM : A. S. OKA AND M. S. SONAK, JJ.
RESERVED ON : 08th OCTOBER, 2018
PRONOUNCED ON : 15th OCTOBER, 2018***

JUDGMENT : (Per M. S. Sonak, J.)

1. Heard Shri M. P. Joseph - Petitioner in person and Shri R. R. Shetty a/w Shri Anand Singh for the Respondent Nos. 1 and 2, Ms. Lata Patne a/w Mr. Vinod Joshi for Respondent No.4.

2. Rule. With the consent and at the request of the learned Counsel for the respondents the petition is taken up for final disposal forthwith.

3. The challenge in this petition to the judgment and order dated 16th April, 2013 made by the Central Administrative Tribunal (for short 'the CAT'), dismissing the Original Application No. 145 of 2013 instituted by the petitioner seeking benefit of Modified Assured Career Progression (MACP) with effect from 1st January, 2006 along with all other consequential benefits.

4. Mr. M. P. Joseph-the petitioner in person submits that the issue raised in the present petition is answered in favour of the petitioner by the Hon'ble Apex Court in the case of **Union of India and others Vs. Balbir Singh Turn and another (2018) 11 SCC 99** and therefore the CAT's impugned judgment and order may be set aside and the relief prayed for by him in his Original Application No. 145 of 2013 be granted.

5. The learned Counsel for the respondents submit that the benefit under the MACP cannot be regarded as any part of the pay structure extended to the civilian employees and therefore the CAT was justified in denying relief to the petitioner. The learned Counsel submit that the recommendations of the pay commissions are not per-se binding upon the Government and the implementation, including the date from which such recommendations are to be implemented are matters in the discretion of the Government. Since, in the present case, implementation in respect of allowances was directed with effect from 1 st September, 2008, the petitioner was not at all justified in seeking implementation with effect from 1 st January, 2006. For these reasons the learned Counsel for the respondents submit that this petition may be dismissed.

6. The rival contentions now fall for our determination.

7. There is no dispute in the present case that the petitioner is eligible for receipt of benefits under the MACP. The only dispute is whether the petitioner is required to be granted the benefits under the MACP with effect from 1 st January, 2006 as claimed by him in his Original Application No. 145 of 2013 or whether such benefits are due and payable to the petitioner with effect from 1 st September, 2008 as contended by and on behalf of the respondents.

8. The sixth pay commission made recommendations with regard to Armed Forces Personnel. By a resolution dated 30 th August, 2008, the Central Government resolved to accept such recommendations with regard to Personnel Below Officer Rank (PBOR) subject to certain modifications. Clause (i) of this resolution as relevant and the same reads as follows :-

"(i) Implementation of the revised pay structure of pay bands and grade pay, as well as pension, with effect from 1-1-2006 and revised rates of allowances (except dearness allowances/relief) with effect from 1-9-2008;"

9. As noted earlier, the only issue which arises in the present petition is whether the benefit under MACP is to be regarded as a part of the pay structure of pay bands and grade pay or whether such benefit is

to be regarded as "allowances (except dearness allowance/relief)". If the benefit under MACP is to be regarded as a part of the pay structure of pay bands and grade pay, then obviously the petitioner is right in contending that such benefit will have to be extended to him with effect from 1st January, 2006 in terms of Clause (i) of the aforesaid resolution dated 30 th August, 2008. However, if, as held by the CAT in the present case, the benefit of MACP is to be regarded as "allowances (except dearness allowance/relief)", then the respondents would be right in their contention that such benefit is payable only with effect from 1st September, 2008.

10. The aforesaid was the precise issue which arose for consideration in case of Balbir Singh Turn (supra). The Apex Court upon consideration of the Central Government Resolution dated 30th August, 2008 along with Part-A of Annexure-I thereto has clearly held that the benefit under MACP is a part of the pay structure and therefore such benefit was payable from 1st January, 2006 and not from 1st September, 2008.

11. The reasoning is contained in paragraphs 6, 7 and 8 of the Apex Court ruling, which reads as follows :-

"6. The answer to this question will lie in the interpretation given to the Government Resolution, relevant portion of which has been quoted hereinabove. A bare perusal of Clause (i) of the Resolution clearly indicates that the Central Government decided to implement the revised pay structure of pay bands and grade pay, as well as pension with effect from 1-1-2006. The second part of the clause lays down that all allowances except the dearness allowance/relief will be effective from 1-9-2008. The AFT held, and in our opinion rightly so, that the benefit of MACP is part of the pay structure and will affect the grade pay of the employees and, therefore, it cannot be said that it is a part of allowances. The benefit of MACP if given to the respondents would affect their pension also.

7. We may also point out that along with this Resolution there is Annexure I. Part A of Annexure I deals with the pay structure, grade pay, pay bands, etc., and Item 10 reads as follows:

10.	Assured Career Progression Scheme for PBORs. The Commission recommends that the time-bound promotion scheme in case of PBORs shall allow	Three ACP upgradations after 8, 16 and 24 years of service has been approved. The upgradation will take place only in the
-----	--	---

	two financial upgradations on completion of 10 and 20 years of service as at present. The financial upgradations under the scheme shall allow benefit of pay fixation equal to one increment along with the higher grade pay. As regards the other suggestions relating to residency period for promotion of PBORs Ministry of Defence may set up an Inter-Services Committee to consider the matter after the revised scheme of running bands is implemented (Para 2.3.34)	hierarchy of grade pays, which need not necessarily be the hierarchy in that particular cadre.
--	--	---

Part B of Annexure I deals with allowances, concessions and benefits and conditions of service of defence forces personnel. It is apparent that the Government itself by placing MACP in Part A of Annexure I was considering it to be the part of the pay structure.

8. The MACP Scheme was initially notified vide Special Army Instructions dated 11-10-2008. The Scheme was called the Modified Assured Career Progression Scheme for Personnel Below Officer Rank in the Indian Army. After the Resolution was passed by the Central Government on 30-8-2008 Special Army Instructions were issued on 11-10-2008 dealing with revision of pay structure. As far as ACP is concerned Para 15 of the said letter reads as follows :

"15. Assured Career Progression. In pursuance with the Government Resolution of Assured Career Progression (ACP), a directly recruited PBOR as a Sepoy, Havildar or JCO will be entitled to minimum three financial upgradations after 8, 16 and 24 years of service. At the time of each financial upgradation under ACP, the PBOR would get an additional increment and next higher grade pay in hierarchy."

Thereafter, another letter was issued by the Adjutant General Branch on 3-8-2009. Relevant portion of which reads as follows :

"... The new ACP (3 ACP at 8, 16, 24 years of service) should be applicable w.e.f. 1-1-2006, and the old provisions (operative w.e.f. the Vth Pay Commission) would be applicable till 31-12- 2005. Regular service for the purpose of ACP shall commence from the date of joining of a post in direct entry grade."

Finally, on 30-5-2011 another letter was issued by the Ministry of Defence, relevant portion of which reads as follows:

"5. The Scheme would be operational w.e.f. 1-9-2008. In other words, financial upgradations as per the provisions of the earlier ACP scheme (of August 2003) would be granted till 31-8-2008."

Therefore, even as per the understanding of the Army and other authorities up till the issuance of the letter dated 30-5-2011 the benefit of MACP was available from 1-1-2006."

[emphasis supplied]

12. The CAT, when it delivered the impugned judgment and order dated 16th April, 2013 did not have the benefit of the ruling of the Apex Court in **Balbir Singh Turn (supra)** which was decided only on 8th December, 2017. The view taken by the CAT in the impugned judgment and order is now in direct conflict with the view taken by the Apex Court in **Balbir Singh Turn (supra)**. Obviously, therefore, the impugned judgment and order will have to be set aside and the petitioner will have to be held to be entitled to receive the benefits under MACP with effect from 1 st January, 2006 together with all consequential benefits.

13. The contentions raised by and on behalf of the respondents cannot be accepted, particularly, in the light of the ruling of the Apex Court in **Balbir Singh Turn (supra)**. The Apex Court, in clear terms and in the precise context of Central Government's resolution dated 30 th August, 2008 held that the benefit of MACP is a part of the pay structure and not merely some allowance. The Apex Court has held that the benefit of MACP affects not only the pay but also the pension of an employee and therefore, the same, is not an allowance but part of the pay itself. In terms of Clause (i) of the Central Government's resolution, admittedly, the pay component became payable with effect from 1st January, 2006 unlike the allowance component which became payable from 1 st September, 2008.

14. Besides, this is not a case where the petitioner was insisting upon preponement of the date for implementation of the recommendations of the pay commission. The Central Government, vide resolution dated 30th August, 2008 had already accepted the recommendations with regard to POBR, no doubt subject to certain modifications. The relief claimed by the petitioner was entirely consistent with Clause (i) of the resolution dated 30th August, 2008, which in fact required the Government to extend benefits of revised pay structure of pay bands and grade pay, as well as pension with effect from 1st January, 2006.

15. Accordingly, we dispose of this petition with the following order:-

ORDER

(a) The impugned judgment and order dated 16th April, 2013 made by the CAT is hereby set aside.

(b) The petitioner is held entitled to receive the benefit of MACP with effect from 1st January, 2006 together with all consequential benefits.

(c) The respondents are directed to work out the benefits of MACP with effect from 1st January, 2006 together with consequential benefits and to pay the same to the petitioner as expeditiously as possible and in any case within a period of three months from today.

(d) If, such benefits/consequential benefits are not paid to the petitioner within three months from today, then the respondents will liable to pay interest thereon @ 6% p.a. from the date such payments became due and payable, till the date of actual payment.

(e) Rule is made absolute in the aforesaid terms. There shall however be no order as to costs.”

2. In a similar matter it went to the Hon'ble Apex Court in Union of India and Others Vs. Balbir Singh Turn and Another reported in (2018) 11 SCC 99, which we quote:

“IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL DIARY NO. 3744 OF 2016

Union of India and Ors. Appellant(s)
 Vs.
 Balbir Singh Turn & Anr.Respondent(s)

JUDGMENT

Deepak Gupta, J.

1. Applications for condonation of delay in filing and refiling the appeals are allowed. This bunch of appeals is being disposed of by a common judgment since similar questions of law are involved.

2. The 6th Central Pay Commission was set up by the Government of India to make recommendations in matters relating to emoluments, allowances and conditions of service amongst other things. The Pay Commission also made recommendation with regard to armed forces personnel. On 30th August, 2008, the Central Government resolved by a resolution of that date to accept the recommendation of the 6th Central Pay Commission ('CPC' for short) with regard to the Personnel Below Officer Rank (PBOR) subject to certain modifications. Clause (i) of the Resolution reads as follows :-

“(i) Implementation of the revised pay structure of pay bands and grade pay, as well as pension, with effect from 01.01.2006 and revised rates of allowances (except Dearness Allowance/relief) with effect from 01.09.2008;” Clause 9 of the Resolution reads as follows :-

“(ix) Grant of 3 ACP up-gradation after 8, 16 and 24 years of service to PBORs;”

3. Under the recommendations made by the 5th CPC there was a provision for Assured Career Progression (ACP). Vide this scheme, if an employee was not promoted he was entitled to get the next higher scale of pay after completion of 12/24 years of service. The 6th CPC recommended the grant of benefit of ACP after 10 and 20 years of service. The Union of India, however decided to grant 3 ACP upgradations, after 8, 16 and 24 years of service to PBORs, as per Clause (ix) extracted above. However, it would be pertinent to mention that the 6th CPC did away with the concept of pay scales and reduced

the large number of pay scales into 4 pay bands and within the pay bands there was a separate grade pay attached to a post.

4. For the purpose of this judgment we are dealing with the facts of Civil Appeal Diary No. 3744 of 2016. It would be pertinent to mention that all the petitioners before the Armed Forces Tribunal ('AFT' for short) who are respondents before us are persons below officer rank. The respondents in this case retired after 01.01.2006 but prior to 31.08.2008. They claim that the benefit of the Modified Assured Career Progression ('MACP' for short) was denied to them on the ground that the MACP was made applicable only with effect from 01.09.2008. The respondents approached the AFT praying that they are entitled to the benefit of MACP w.e.f. 01.01.2006, i.e., the date from which the recommendation of the 6th CPC with regard to pay and benefits were made applicable. The stand of the Union of India was that the MACP was applicable only w.e.f. 01.09.2008 and, therefore, the respondents who had retired prior to the said date were not entitled to the benefit of the MACP. The AFT vide the impugned order dated 21.05.2014 held that the benefit of ACP granted to an employee is part of the pay structure which not only affects his pay but also his pension and, therefore, held that the ACP is not an allowance but a part of pay and, therefore, in terms of Clause (i) of the Government Resolution the MACP was payable w.e.f. 01.01.2006.

5. The question that arises for decision is whether the benefit of MACP is applicable from 01.01.2006 or from 01.09.2008.

6. The answer to this question will lie in the interpretation given to the Government Resolution, relevant portion of which has been quoted hereinabove. A bare perusal of Clause(i) of the Resolution clearly indicates that the Central Government decided to implement the revised pay structure of pay bands and grade pay, as well as pension with effect from 01.01.2006. The second part of the Clause lays down that all allowances except the Dearness Allowance/relief will be effective from 01.09.2008. The AFT held, and in our opinion rightly so, that the benefit of MACP is part of the pay structure and will affect the grade pay of the employees and, therefore, it cannot be said that it is a part of allowances. The benefit of MACP if given to the respondents would affect their pension also.

7. We may also point out that along with this Resolution there is Annexure-I. Part-A of Annexure-I deals with the pay structure, grade pay, pay bands etc., and Item 10 reads as follows :-

10.	Assured Career Progression Scheme for PBORs.	Three ACP upgradations after 8, 16 and 24 years
-----	--	---

	The Commission recommends that the time-bound promotion scheme in case of PBORs shall allow two financial upgradations on completion of 10 and 20 years of service as at present. The financial upgradations under the scheme shall allow benefit of pay fixation equal to one increment along with the higher grade pay. As regards the other suggestions relating to residency period for promotion of PBORs Ministry of Defence may set up an Inter-Services Committee to consider the matter after the revised scheme of running bands is implemented (Para 2.3.34)	of service has been approved. The upgradation will take place only in the hierarchy of grade pays, which need not necessarily be the hierarchy in that particular cadre.
--	--	---

Part-B of Annexure-I deals with allowances, concessions & benefits and Conditions of Service of Defence Forces Personnel. It is apparent that the Government itself by placing MACP in Part-A of Annexure-I was considering it to be the part of the pay structure.

8. The MACP Scheme was initially notified vide Special Army Instructions dated 11.10.2008. The Scheme was called the Modified Assured Career Progression Scheme for Personnel Below Officer Rank in the Indian Army. After the Resolution was passed by the Central Government on 30.08.2008 Special Army Instructions were issued on 11.10.2008 dealing with revision of pay structure. As far as ACP is concerned Para 15 of the said letter reads as follows:-

“15. Assured Career Progression. In pursuance with the Government Resolution of Assured Career Progression (ACP), a directly recruited PBOR as a Sepoy, Havildar or JCO will be entitled to minimum three financial upgradations after 8, 16 and 24 years of service. At the time of each financial upgradation under ACP, the PBOR would get an additional increment and next higher grade pay in hierarchy.”

Thereafter, another letter was issued by the Adjutant General Branch on 03.08.2009. Relevant portion of which reads as follows:-

“.....The new ACP (3 ACP at 8, 16 and 24 years of service) should be applicable w.e.f. 1 Jan 2006, and the old provns (operative w.e.f. the Vth Pay Commission) would be applicable till 31 Dec. 05. Regular service for the purpose of ACP shall commence from the date of joining of a post in direct entry grade.”

Finally, on 30.05.2011 another letter was issued by the Ministry of Defence, relevant portion of which reads as follows:-

“5. The Scheme would be operational w.e.f. 1st Sep. 2008. In other words, financial up-gradations as per the provisions of the, earlier ACP scheme (of August 2003) would be granted till 31.08.2008.”

Therefore, even as per the understanding of the Army and other authorities up till the issuance of the letter dated 30.05.2011 the benefit of MACP was available from 01.01.2006.

9. As already held by us above, there can be no dispute that grant of ACP is part of the pay structure. It affects the pay of the employee and he gets a higher grade pay even though it may be in the same pay band. It has been strenuously urged by Col. R. Balasubramanian, learned counsel for the UOI that the Government took the decision to make the Scheme applicable from 01.09.2008 because many employees would have lost out in case the MACP was made applicable from 01.01.2006 and they would have had to refund the excess amount, if any, paid to them. His argument is that under the old Scheme if somebody got the benefit of the ACP he was put in the higher scale of pay. After merger of pay scales into pay bands an employee is only entitled to higher grade pay which may be lower than the next pay band. Therefore, there may be many employees who may suffer.

10. 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.

11. Col. R. Balasubramanian, learned counsel for the UOI relied upon the following three judgments viz. P.K. Gopinathan Nair & Ors. v. Union of India and Ors. 1, passed by the High Court of Kerala on 22.03.2017, Delhi Urban Shelter Improvement Board v. Shashi Malik & Ors.2, passed by the High Court of Delhi on 01.09.2016, K.K. Anandan & Ors. v. The Principal Accountant General Kerala (Audit) & Ors.3 passed by the Central Administrative Tribunal, Ernakulam Bench, Kerala on 08.02.2013. In our view, none of these judgments is applicable because the issue whether the MACP is part of the pay structure or allowances were not considered in any of these cases. WP(C) No.23465 of 2013(G) LPA 405 of 2016 O.A. No. 541 of 2012

12. In this view of the matter we find no merit in the appeals, which are accordingly disposed of. All pending applications are also disposed of."

3. The same matter is in issue here also. Contrary to the contentions of the respondents, the Hon'ble Apex Court had clearly stated that MACP is a part of pay structure not only affecting grade pay but also pension thus it is not part of allowance and would be applicable from 01.01.2006.

4. In fact in another set of cases in a similar matter we have also allowed OA No. 1802/2018 dated 18.07.2019, which also we quote:

"O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that he joined the Military Engineering Service(MES), Min. of Defence on 5.2.1973 as Gr.II Superintendent (B/R), a Civilian Employee and has retired from service w.e.f. 31.5.2008 on attaining the age of superannuation as an Executive Engineer(QS&C) and was drawing pay in PB-3 with GP Rs.6600/- as

on 31.5.2008. He submits that he was given 2nd ACP benefits in the pay scale of Rs.10000-325-15200 w.e.f. 9.8.1999 which pay scale has been revised to PB-3 with GP Rs.6600/- w.e.f. 1.1.2006 in view of recommendation of VI CPC. The Union of India had introduced MACP Scheme in place of ACP Scheme vide OM dtd.19.5.2009(Annexure-A1) and made it applicable w.e.f. 1.9.2008. The Union of India has issued various clarifications on MACP vide OM dtd.9.9.2010(AnnexureA2).

2. The applicant submits that the Hon'ble Apex Court in Civil Appeal Diary No.3744/2016 vide order dtd.8.12.2017(Annexure-A3) held that the benefit under the MACPS has to be extended w.e.f. 1.1.2006 on the reasoning that the benefit under the MACPS is a part of pay structure. Then the applicant along with some of his colleagues have given representations on 22.2.2018(Annexure-A4) to the 2nd respondent seeking grant of 3rd MACP benefit w.e.f. 1.1.2006, for which the respondents have given reply stating that 'since the applicant got superannuated prior to operation of the MACP Scheme, the benefit of 3rd MACP is not due'. The applicant further submits that the Hon'ble High Court of Judicature at Bombay rendered a judgment in WP.No.1763/2013 in the case of M.P.Joseph vs. UOI & ors. on 15.10.2018 holding that benefits under the MACPS dtd.19.5.2009 is available w.e.f. 1.1.2006 by following the Apex Court judgment dtd.8.12.2017(Annexure-A5). Since these judgments are binding on the respondents, the applicant has filed the present OA seeking a direction to the respondents to grant 3rd MACP benefits w.e.f. 1.1.2006 with all the consequential benefits as he completed more than 30 years of regular service as on 1.1.2006.

3. The respondents, on the other hand, have submitted in their reply statement that the Apex Court judgment dtd.8.12.2017 pertains to Defence Personnel i.e. Persons Below Officer Rank(PBOR) whereas the applicant is a civilian employee of Central Govt. i.e. MoD and hence the judgment is not applicable to him. The applicant is not an applicant in WP.No.1773/2013 of Hon'ble Bombay High Court and therefore, the judgment delivered in the said WP is also not applicable directly to him till suitable OM is issued by the Competent Authority i.e. DOPT to change the policy in this regard. Further it is not feasible to prepone the benefits of MACP Scheme to 1.1.2006 from 31.8.2008 as more than nine years of time has passed and the issue has 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 1.1.2006 to 31.8.2008 which is much more beneficial to them and recovery from them is not practicable/possible.

4. The respondents submit that the applicant was granted all benefits which were due on the date of his superannuation as per the existing Govt. orders. Seeking 3rd MACP benefits referring to Hon'ble High Court of Bombay order on the similar lines is not justified, until and unless the said policy is amended by DoPT through a specific order. Therefore, the prayer of the applicant is not justified and therefore, the OA is liable to be dismissed with costs.

5. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that in both the judgments of the Hon'ble Apex Court reported in (2018) 11 SCC 99 and High Court of Bombay in WP.No.1763/2013, it has been held that the benefit under the MACP is to be regarded as part of the pay structure of pay bands and grade pay and as such MACP benefits have to be extended w.e.f. 1.1.2006. Both the judgments are based on the identical resolutions of the Central Government dtd.29.8.2008 in respect of Civil Employees in Groups-A,B,C & D and Personnel of All India Services. The contention of the respondents that the change of effective date will lead to surge of litigations, particularly from employees who availed the benefits under ACP Scheme during 1.1.2006 to 31.8.2008, which is much more beneficial to them and recovery from them is not practicable/possible, is not sustainable as the Hon'ble Apex Court has observed, while rejecting the submissions of the Union of India that if the MACP is made applicable w.e.f. 1.1.2006 then many employees would have lost out and they would have had to refund the excess amount, if any, paid to them and that there may be many employees who may suffer, that there may be some gainers and some losers and the intention of the Government was clear that the MACP scheme which is part of the pay structure would apply from 1.1.2006 which is a decision of the Cabinet and the same could not be modified by issuing executive instructions. Therefore, the above judgments are binding on the respondents and it cannot be delayed on the excuse of issuance of any OM by DoPT at some uncertain future.

6. We have heard the Learned Counsel for both the parties and perused the materials and written arguments note filed by both the parties in detail. The issue in this case is in a very small compass. The point whether MACP is part of the pay and pay structure or part of allowances has been very clearly answered by the Hon'ble Apex Court vide its judgment dtd.8.12.2017(Annexure-A3) in Civil Appeals Diary No.3744/2016 reported in (2018) 11 SCC 99 and the judgment of Hon'ble High Court of Judicature at Bombay in WP.No.1763/2013 rendered on 15.10.2018 vide Annexure-A5. The settled position in this regard is that the MACP is regarded as part of the pay structure and Pay Band and Grade Pay and as such the MACP benefits have to be extended w.e.f. 01.01.2006 wherever the employees are eligible. The applicant has also quoted the resolution of the Govt. of India

dtd.29.8.2008 with respect to the civilian employees which is as follows:

“2. The Commission's recommendations and Government decision thereon with regard to revised scales of pay and dearness allowance for civilian employees of the Central Government and personnel of the All India Services as detailed in the Part-A of Annex-I will be made effective from 1st day of January, 2006.

3. The revised allowances, other than dearness allowance, will be effective from 1st day of September, 2008.”

7. The only contention of the respondents would be that the applicant was not a party before the Hon'ble Bombay High Court and therefore the judgment is not applicable directly to him till a suitable order is issued by the competent authority i.e. DoPT to change the policy in this regard. They have also cited that more than 9 years' time has been elapsed since the implementation of the MACP and therefore any change of effective date will lead to a surge of litigations particularly from the employees who availed the benefits of ACP scheme during the period from 01.01.2006 to 31.08.2008. The applicant in his written arguments has cited the order of the Hon'ble Apex Court in the case of Inder Pal Yadav vs. Union of India reported in (1985) 2 SCC 648 wherein para-5 states as follows:

.....”Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Hon'ble Court.”...

He has also cited the judgment of the Hon'ble High Court of Karnataka in Nagappa vs. State of Karnataka reported in ILR 1986 KAR 3093 wherein at para-2 it is stated as follows:

“In our opinion, it is not necessary for every person to approach this Court for a relief similar to the one already granted by this Court in the aforesaid decisions. If a decision has been rendered by this Court, it would be proper for the authorities to follow and extend the benefit of that decision in like cases coming before them. That should be the guiding principle to be borne in mind in the administration. It is not proper to drive every person to seek relief in this Court. It is indeed the duty of the authorities to extend the benefits of the concluded decision of this Court to all other similar cases.”

8. The respondents' Counsel has referred to the judgment of this Tribunal in OA.No.1337 & 1364 to 1375/1994 dtd.31.03.1995 which discussed the issue relating to parity of pay between the Military Engineering Services vis-a-vis the JEs in CPWD. The orders in this case are not relevant to the present case and therefore we have to agree with the contention of the applicants that they are squarely covered by the judgments of the Hon'ble Apex Court and Hon'ble Bombay High Court(supra).

9. The OA is therefore allowed. The respondents are directed to issue necessary orders within a period of three(3) months from the date of issue of this order. No costs."

5. Shri Gajendra Vasu, learned counsel for the respondents, points to a small distinction that these are civilian matters and other cases of the Hon'ble Apex Court concern defence employees. As far as service jurisprudence is concerned, there is no distinction between different employees in different institutions. It is all the same Government of India and the same governance system.

6. Therefore, the OA is allowed. Benefits to be made available within two months next. No order as to costs.

(C.V. SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00939/2019

Annexure A1	Copy of the OM dated 19.05.2009
Annexure A2	Copy of the Clarificatory OM dated 09.09.2010
Annexure A3	Copy of the Apex Court judgment dated 08.12.2017 in CA Diary No.3744/2016
Annexure A4:	Copy of the Hon'ble Bombay High Court Judgment dated 15.10.2018
Annexure A5	Copy of the Order dated 05.01.2019

Annexures referred in reply statement

Nil

* * * * *