

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

Original Application No.164 of 2017

Dated this the 29th day of January, 2021

CORAM:

Hon'ble Shri Jayesh V. Bhairavia, Member (J)

Hon'ble Dr.A.K. Dubey, Member (A)

- 1) Bherulal S/o Magraj Chauhan
Male, Aged 55 years,
Presently posted as : Superintendent of Service Tax , Ahmedabad,
residing at : 5, Arjun Tenements,
Opp: State Bank of India, Nirnaynagar, Ahmedabad – 382 481.
 - 2) Sunil S/o Srinivas Gupte,
Male, Age 58 years,
Presently posted as:
Superintendent, Vadodara,
9-B, S.T. Co-operative Housing Society,
Opp. TB Hospital, Gotri Road,
Vadodara – 390 021.
 - 3) Radheshyam S/o Ramadhar Rai,
Male, Aged 56 years,
Presently posted as:
Superintendent, Customs Kandla,
Residing at:
Ward 2-B, Plot No. 346,
Adipur Kutch – 370 205.
- ... Applicants

By Advocate Shri Joy Mathew

V e r s u s

1. The Union of India, Notice to be served through
The Secretary, Ministry of Finance,
Department of Expenditure, North Block, New Delhi – 110 001.
- 2 Central Board of Excise and Customs,
Notice to be served through :
The Chairman, CBEC,
Ministry of Finance,
Department of Revenue, New Delhi – 110 001.
- 3 The Department of Personnel & Training,
Notice to be served through :
The Secretary, Department of Personnel
& Training, North Block, New Delhi – 110 001.
- 4 The Pr. Chief Controller of Accounts,
Central Board of Excise & Customs,
Room No. 107, A.G.C. R. Building, I.P. Estate,
New Delhi – 110 002.

- 5 The Chief Commissioner, Central Excise,
Customs & Service Tax, Vadodara Zone,
Central Excise Building, Race Course Circle,
Vadodara – 390 007.
- 6 The Chief Commissioner, Customs,
Custom House, Nr. All India Radio,
Navrangpura, Ahmedabad- 380 009.
- 7 The Principal Commissioner, Central Excise-I,
Central Excise Bhavan, Opp. Polytechnic,
Ambawadi, Ahmedabad – 380 006.
- 8 The Commissioner, Customs,
Custom House, Kandla,
Kutchh – 370 210.

...Respondents

(By Advocate : Shri H.D.Shukla)

ORDER (ORAL)

Per Shri Jayesh V Bhairavia, Member(J)

- 1 The applicants, working as Superintendent under Central Excise, Custom and Service Tax have filed the present OA u/s 19 of the AT Act and pray for grant of following reliefs,

“(A) *Be pleased to allow this Application.*

(B) *Be pleased to direct the respondent herein to grant the benefit 2nd MACP being Grade Pay of Rs. 5400 in PB-3 w.e.f. the date 01.09.2008 when the applicants have already completed 20 years of service and the MACP Scheme was made effective. Be pleased to quash and set aside para 8 of Annexure 1 of OM No. 35034/3/2008-Estt.(D) dated 19.05.2009 (Annexure A/1) and further be pleased to declare the same to be ultra vires the MACP Scheme as well as the 6th Pay Commission’s Recommendations.*

(c) *Be pleased to quash and set aside instruction dated 22.06.2015 issued by the Principle Chief Controller of Accounts, CBEC, New Delhi and their file no. Coord/Expdt./OA 675 of 2013/2015-16 at Annexure – A/2 to this Application.*

(D) *Be pleased to quash and set aside Clarification being F.No. A-23011/25/2015-Ad IIA dated 20/06/2016 at Annex. A3 to this Application.*

(E) *Be pleased to declare that the benefit of Non Functional Grade Pay granted to Group B officers cannot be set-off against Financial Up-gradation under the Modified Assured Career Progression Scheme.*

- (F) *Be pleased to declare that the present applicants are eligible to the benefit of 3rd MACP by way of fixing the pay of the present applicants in PB-3 with pay of Rs. 15600-39,100/- with Grade Pay Rs. 6600/-.*
- (G) *Be pleased to direct the respondents to grant the benefit of 3rd MACP to the present applicants by fixing their pay at Rs. 15600-39,100/- with Grade Pay of Rs. 6600/- in PB-3 with all consequential benefits including arrears of pay.*
- (H) *Be pleased to impose appropriate costs on the respondents.*
- (I) *Be pleased to pass any other or further orders that this Hon'ble Tribunal may deem fit in the facts and circumstances of the present application and in the interest of justice and equity.*

2 The facts in brief are that all three applicants herein were initially appointed as Inspectors in the year 1985-1987 by way of Direct Recruitment. Thereafter, in the year 1999-2000 all the applicants were granted 1st financial up-gradation. All the applicants were granted regular promotion to the post of Superintendents.

2.1 On implementation of the VI Pay Commission recommendations, the Government of India (DoPT) introduced a new scheme vide OM dated 19.05.2009 (Ann. A/1), known as MACPS and was given effect from 01.09.2008. It provides for three Financial Up-gradations to those employees who do not get any promotion on completion of 10, 20 and 30 years of regular service.

2.2 It is stated by the applicants that after introduction of aforesaid MACP Scheme, Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs vide clarification bearing F.No.A-26017/98/2008-Ad.IIA **dated 16.09.2009 (Ann. A/5)** decided that the Superintendents who have completed four years of regular service, are eligible for Rs.5400/- grade pay in pay band 2 as Non-Functional Up-gradation. Accordingly, the applicants were granted the Non-Functional Up-gradation in Pay Band – 2 Grade pay of Rs.5400/- during the period between 1.1.2006 to 31.08.2008.

It is stated by the applicants that till date they have not been granted Financial up-gradation, i.e., 2nd MACP in PB-3 with GP Rs. 5400/- though similarly situated other officers had been already granted the said benefits.

2.3 The applicants have completed of 30 years of service from 01.01.2015 till date. It is submitted that similarly placed other officers who have completed 30 years of service, were granted further financial up-gradation in PB-3 with GP Rs. 6600/- under MACPS. However, the applicants claim that they have not been granted the said benefit of 3rd MACP.

2.4 It is stated that in the year 2012 similarly placed one Shri S Balakrishnan alongwith two others officers had approached the Madras Bench of this Tribunal in OA 280/2012 to grant them 3rd MACP in the grade pay of Rs.6600/-. It is stated that by taking into consideration the order passed by CAT Chandigarh Bench in OA No.1038/2010 in the case of Rajpal v/s Union of India which came to be upheld by Hon'ble High Court of Punjab & Haryana vide order dated 19.10.2011 in the case of Union of India v/s Rajpal in (WP No.19387/2011), the said OA 280/2012 of S Balakrishnan was allowed by Madras Bench of this Tribunal vide order dated 22.07.2013 (Ann. A/6). Being aggrieved by the order passed by CAT Madras Bench dated 22.07.2013, the Union of India preferred a Writ Petition No. 11535/2014 on the file of the Hon'ble High Court of Judicature at Madras which came to be dismissed by its order dated **16.10.2014 (Annexure A/7)**. The SLP (C) No.15396/2015 filed by the Government against the judgment of the Hon'ble High Court of Madras came to be dismissed by the Hon'ble Supreme Court by its order dated **31.08.2015 (Annexure A/8)** by observing as under:-

"Upon hearing the counsel, the Court made the following order:

Delay condoned.

The Special Leave Petition is dismissed."

It is submitted that accordingly the order dated 22.07.2013 passed by CAT Madras Bench (Now Chennai Bench) becomes final and binding on the present respondents.

- 2.5** Further, it is stated that another similarly placed officer, namely, one Shri R Chandrasekaran approached the Madras Bench of this Tribunal in OA 675/2013 seeking the very same reliefs as sought by S Balakrishnan as referred hereinabove. The said OA 675/2013 of R. Chandrasekaran came to be dismissed on 24.02.2014. Being aggrieved by it, said R Chandrashekharan had filed Writ Petition No.19024/2014 on the file of the Hon'ble High Court of Judicature at Madras and vide judgment dated 08.12.2014 (Ann. A/9) the Hon'ble High Court of Madras was pleased to set aside the order dated 24.02.2014 passed in OA 675/2013 and remanded the matter to the Department of Personnel, Public Grievances and Pension for their fresh consideration.
- 2.6** It is stated that pursuant to order dated 8.12.2014 passed by Hon'ble High Court of Madras in the case of R Chandrasekaran, initially the Government vide a letter dated 26.05.2015—(Annexure A/10) addressed to the Chief Commissioner of Central Excise, Chennai directed him to implement the order and to grant the third Financial Up-gradation in the grade pay of Rs.6600/- to said Shri R Chandrasekaran. The applicants also submits that vide letter dated 22.06.2015 (Ann. A/2) further directed to Deputy CA South Zone Chennai that the judgment passed in the case of R Chandrashekharan applicable only for him and could not be applicable in general to all cases. It is submitted that the said judgment of the Hon'ble High Court of Madras was judgment *in- rem*.
- 2.7** It is stated that the applicants had made representation seeking grant of MACP benefits in PB-3 with GP Rs. 6600/- since they had completed 30 years of service however till date no action has been taken on such representations.

- 2.8 It is stated that, now, it has transpired that the respondents department vide clarification dated 20.06.2016 (**Annexure A/3**) which is impugned herein has decided to take a view that *"the grant of Non-Functional grade pay of Rs.5400/- in PB-2 to the Superintendents needs to be counted as one financial up-gradation for the purpose of MACP Scheme"*. It is further stated that in view of the said clarification dated 20.06.2016 the benefits granted to the said R Chandrasekaran vide order dated 26.5.2015 was treated to have been withdrawn and all the Controlling Authorities were requested to take appropriate action to settle the MACP cases accordingly.
- 2.9 It is stated that the respondents by way of said clarification dated 20.06.2016 seek to nullify the judgment of Hon'ble Madras High Court and hence there no possibility that the respondents department will extend the benefit of 3rd MACP to the applicants. Hence, being aggrieved, the present applicants filed the present OA.
3. At this stage it is appropriate to mention that aggrieved with the decision dated 20.06.2016 (Ann. A/3) other similarly situated Superintendents/Assistant Commissioners had approached this Tribunal by way of various OAs. This Tribunal initially vide its common order Bajranglal & Ors. Vs. Union of India OA No. 247/2017 decided on 28.07.2017 and common orders dated 22.09.2017 passed in OA 581/2016 & other connected identical OAs declined to entertain the said OAs. This Tribunal in the said orders held that the order passed in S Balakrishnan had not attained finality in view of the fact that the Hon'ble Apex Court in SLP against the said judgment has not passed the order on merits as the said SLP was simply dismissed in limine. Further, it was observed by this Tribunal therein that the SLP No. 7467/2013 preferred against the judgment of Hon'ble High Court of Punjab & Haryana in Rajpal's case (supra) was dismissed vide order dated 15.04.2013 on the ground of delay and laches and the same was dismissed in limine *but not on merit*. It was also observed that order **passed in the case of M V Mohanan Nair has direct nexus with the issue involved in the present case and SLP in case of M V Mohanan**

Nair was pending for consideration before the Hon'ble Apex Court. Accordingly, the said OAs was rejected by this Tribunal.

3.1 It is noticed that aggrieved by the above order dated 22.09.2017 as also against other identical orders passed by this Tribunal in similar group of OAs, the original applicants had approached the Hon'ble High Court by way of filing SCAs. **During the pendency of the said SCAs, the Hon'ble Apex Court decided the pending SLP in the case of M V Mohanan Nair vide judgment dated 05.03.2020** and in light of the said judgment, the Hon'ble High Court vide its common order dated 09.03.2020 passed in SCA 5868/2020 alongwith other cognate petitions remanded back all the OAs including the present OA for fresh consideration with following observations, as indicated in para 13, 14, 15 and 16 of the said order dated 09.03.2020:-

“13. We have noticed that although O.A.s have not been entertained as mentioned herein above, in wake of the pendency of the matter for consideration before the Apex Court in case of Union of India vs. M.V.Mohanan Nair and other five SLPs, the Delhi High Court has been followed by the Tribunal where it noticed the different views by different High Courts. The issues raised before the Tribunal in all these original applications concern the interpretation and clarification of grant of 3rd Financial Upgradation under the MACP to the superintendents by placing them in pay band- III with grade pay of 6600/- who were granted non-functional grade pay of Rs. 5400/- in pay band- II.

14. This Court notices that in case of Union of India vs. M.V.Mohanan Nair delivered on 05.03.2020, the Apex Court has upheld the Delhi High Court's view in case of Union of India vs. All India CGHS Employees Association, which upheld the clarificatory communication choosing not to interfere with the policy. We are conscious that the Tribunal has followed the Delhi High Court on law point and the very issue is now addressed and upheld by the Apex Court. However, only on the ground that in case of petitioner, there has been no individual examination in wake of pendency of matter before the Supreme Court, let all the matters be examined by the Tribunal on merits, with whatever the scope is left, as individual examination on merit in each petition would be necessary, even if, the legal issue stands covered, more particularly, since certain directions have been issued by the Apex Court to the Union of India in the very decision, which it is bound to follow, the same shall also needed to be applied in case of each of the petitioners. To deny consideration on merit in individual case may amount to jeopardizing the right to be considered.

15. Resultantly, all matters are remanded for fresh consideration on merit in wake of the delivery of the aforesaid decision. This Court has not examined the individual matter on merit which shall be done by the Tribunal expeditiously in not later than six months' period, with the above

clarification as mentioned in para (5), from the date of receipt of copy of this order.

16. All petitions stand disposed of accordingly. Rule is discharged.”

3.2 Pursuant to the aforesaid order and directions passed by Hon’ble High Court Gujarat, the said identical OAs were re-heard afresh by this Tribunal and vide order dated 25.01.2021 the said group of OAs were dismissed by separate orders, wherein this Tribunal, held that the impugned decision dated 20.06.2016 (Ann. A/3) issued by the respondents was in consonance with the provision of para 8.1 of Annexure – I of MACP Scheme and in light of law laid down by Hon’ble Apex Court in the case of Union of India Vs. M V Mohanan Nair reported in (2020) 5 SCC 421 as well as the various clarifications issued by the competent authorities under MACPS, i.e. DoPT, and the respondent CBEC had correctly decided to treat the financial up-gradation granted as NFG to the Superintendents as one single financial up-gradation for the purpose of MACPS and the said Non-functional scale in GP Rs. 5400/- in PB-2 is to be treated as a separate Grade Pay. Accordingly, the decision for withdrawal of wrongful grant of 3rd MACP in PB-3 with GP Rs.6600/- and consequent re-fixation of the pay and recovery, the said decision of the respondents was upheld by this Tribunal in its order dated 25.01.2021.

4 In the backdrop of above facts and circumstances, learned counsel for the applicants *Shri Joy Mathew* fairly submitted that the prayers sought in present OA were similar in nature to the ones in the identical group of matter has referred hereinabove which had been decided, and therefore, appropriate order be passed in this OA accordingly.

5 In the present case, it can be seen that the grievance of the applicants against the validity of decision dated 20.06.2016 (Ann. A/3) has been considered and decided by this Tribunal in identical OAs filed by similarly placed other officers vide its order dated 25.01.2021. As noted hereinabove this Tribunal in its order held that the impugned decision dated 20.06.2016 does not

suffers from any infirmities and same was issued by respondents in consonance with terms of MACPS. Further in terms of law laid down by Hon'ble Apex Court in the case of M V Mohanan Nair (Supra) whereby the Hon'ble Apex Court declined to interfere with the terms of MACPS, the challenge to the validity of provision of para 8.1 of Annexure – A/1 of MACPS was dismissed by this Tribunal in the said order dated 25.01.2021.

Under the circumstances, it is not proper to take any different or contrary view as to the decision of this Tribunal dated 25.01.2021. In our considered view the decision ~~has~~ referred hereinabove is squarely applicable in the present case. Accordingly, the prayer sought in this OA against the implementation of impugned decision dated 20.06.2016 is not tenable as also claim of applicants to declare that they are eligible for grant of 3rd MACP in PB-3 with GP Rs. 6600/- is also without merit.

At this stage, we also take note of the contention stated in para 7 of the OA that up till the date the applicants have not been granted any financial up-gradation in PB-3 GP Rs. 5400/- as the same financial up-gradation granted to similarly situated officers. It is also contended by the applicants that 20/24 years of service they have not been granted any financial up-gradation. Though the applicants have stated that they had submitted their representations in this regard, however no such representation has been placed on record or annexed with the present OA. It is also not clear from the pleadings / material on record that after grant of NFG in **PB-2** with GP Rs. 5400/- if applicants have not been granted financial up-gradation in **PB-3** with GP Rs. 5400/- on completion of 24 years of service on what basis the applicants claim that the decision of respondents dated 20.06.2016 is prejudicial to their claim for 3rd MACP in PB- 3 GP Rs. 6600/-. As such the grievance as raised by the applicants is of no merit.

- 6 In light of settled legal position discussed and highlighted hereinabove, we do not find any reason to interfere with the impugned decision as there is no infirmity in the impugned order dated 20.06.2016. The present OA lacks merit. Hence, the applicants are not entitled for any relief as prayed for in this OA. The OA accordingly stands dismissed. No costs.

(A K Dubey)
Member(A)

(Jayesh V Bhairavia)
Member(J)

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