

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

ORIGINAL APPLICATION NOs.170/01621/2018,1622/2018, 1703/2018,  
1704/2018, 1712/2018, 1832/2018, 1833/2018, 1834/2018, 1835/2018,  
1836/2018, 1837/2018, 1838/2018, 1839/2018, 1841/2018, 1844/2018,  
1845/2018, 1846/2018, 1847/2018, 1848/2018, 1849/2018, 1850/2018,  
1851/2018, 1852/2018, 1853/2018, 1854/2018, 1855/2018, 1856/2018 &  
1857/2018

DATED THIS THE 04<sup>TH</sup> DAY OF MARCH, 2020

**HON'BLE DR K B SURESH....MEMBER (J)**  
**HON'BLE SHRI C V SANKAR .....MEMBER (A)**

**OA No.170/01621/2018**

Sri.H.K.Munegowda, aged about 63 years,  
S/o Late Sri.C.Kempaiah, residing at No.1537,  
1<sup>st</sup> Main Road, Judicial Layout, GVK Post,  
Bengaluru-560 065 (Retired Assistant  
Commissioner of Central Excise)

...Applicant

(By Advocate Shri.M A Narayana)

Vs.

1. Union of India  
Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi-110 001  
(Represented by Secretary, Department of Expenditure)
2. Government of India, Ministry of Finance,  
Department of Revenue,  
CBIC, North Block,  
New Delhi-110 001 (Represented by Chairman)
3. The Union of India, Ministry of Personnel, PG,  
And Pension, North Block, New Delhi-110 001.  
(Represented by Secretary DOPT)
4. The Principal Chief Controller of Accounts,  
CBIC, AGCR Building, IP Estate,  
New Delhi-110 002.

5. The Principal Chief Commissioner of  
Central Tax, P.B. No.5400, Central Revenue Buildings,  
Queen's Road, Bengaluru-560 001.

6. The Pay and Accounts Officer, Customs and  
Central Excise, 1<sup>st</sup> Floor, Annexe II,  
C R Building, Queen's Road, Bengaluru-560 001.

...Respondents

(By Shri.V N Holla, Senior Panel Counsel)

**OA No.170/01622/2018**

Shri M.K. Narayan,  
Aged about 61 years,  
S/o Late Shri M.A. Krishnakumar,  
Residing at Flat 'C' Gr. Floor,  
"7 Hills Excellency", # 33, 2<sup>nd</sup>  
Cross, SBM Colony, Brindavan Nagar,  
Mathikere, Bengaluru 560 054  
(Retired Superintendent of Central Excise)

...Applicant

(By Advocate Shri.M A Narayana)

Vs.

1. Union of India  
Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi-110 001  
(Represented by Secretary, Department of Expenditure)

2. Government of India, Ministry of Finance,  
Department of Revenue,  
CBIC, North Block,  
New Delhi-110 001 (Represented by Chairman)

3. The Union of India, Ministry of Personnel, PG,  
And Pension, North Block, New Delhi-110 001.  
(Represented by Secretary DOPT)

4. The Principal Chief Controller of Accounts,  
CBIC, AGCR Building, IP Estate,  
New Delhi-110 002.

5. The Principal Chief Commissioner of  
Central Tax, P.B. No.5400, Central Revenue Buildings,  
Queen's Road, Bengaluru-560 001.

...Respondents

(By Shri.V N Holla, Senior Panel Counsel)

**OA No.170/01703/2018**

K. Krishnamurthy,  
S/o Ganapathy,  
Aged 59 years,  
Presently working as Assistant Commissioner of Central Tax,  
North West Commissionerate, SP Complex,  
Lalbagh Road, Bangalore 560 027

...Applicant

(By Advocate Shri.Ganesh Kumar)

Vs.

1. Union of India

Represented through the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

5. The Secretary,

Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,

C R Building, Queen's Road,  
Bengaluru

7. The Secretary,

Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001

...Respondents

(By Shri.V N Holla, Senior Panel Counsel)

(By Shri.S.Sugumaran, ACGSC)

**OA NO.170/01704/2018**

L. Rajshekhar,  
S/o Lakshmaiah,  
Aged 59 years,  
Residing at No. 3, Amma,  
1<sup>st</sup> Main Road, IInd Block,  
Thyagarajanagar, Bangalore 560 028

(By Advocate Shri.Ganesh Kumar)

...Applicant

Vs.

1. Union of India

Represented though the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

5. The Secretary,

Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,

C R Building, Queen's Road,  
Bengaluru

7. The Secretary,

Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001

...Respondents

(By Shri.S.Sugumaran, ACGSC)

**OA NO.170/01712/2018**

Sri V. Suresh Kumar,  
Aged about 63 years,  
S/o Late Shri D. Venka Pandit,  
Residing at Flat No. 008, Ground Floor,  
Krishna Redwoods Apartments, No. 392,  
Sy. No. 11/4, Chunchagatta Village,  
Uttarahalli Hobli, Gauravnagar,  
JP Nagar 7<sup>th</sup> Phase, Bengaluru 560 078  
(Retired Superintendent of Central Excise)

...Applicant

(By Advocate Shri.M A Narayana)

Vs.

1. Union of India

Ministry of Finance, Department of Expenditure,  
North Block, New Delhi 110 001  
(Represented by Secretary, Department of Expenditure)

2. Government of India,

Ministry of Finance, Department of Revenue,  
CBIC, North Block, New Delhi 110 001  
(Represented by Chairman)

3. The Union of India,

Ministry of Personnel, PG, and Pension,  
North Block, New Delhi 110 001  
(Represented by Secretary DoP&T)

4. The Principal Chief Controller of Accounts,

CBIC, AGCR Building, IP Estate, New Delhi 110 002

5. The Principal Chief Commissioner of Central Tax,

P.B. No. 5400, Central Revenue Buildings,  
Queen's Road,  
Bengaluru 560 001

6. The Pay and Accounts Officer,

Customs and Central Excise,  
1<sup>st</sup> Floor, Annexe II,  
C R Buildings, Queen's Road,  
Bengaluru 560 001

...Respondents

(By Shri.V N Holla, Senior Panel Counsel)

**OA NO.170/01832/2018**

V.V. Joseph Babu,  
S/o V.C. Varghese,  
Aged 59 years,  
Residing at No. 877, 8<sup>th</sup> Main, 13<sup>th</sup> Cross,  
Saraswathipuram, Mysore 570 009

...Applicant

(By Advocate Shri.R.Ganesh Kumar)

Vs.

1. Union of India

Represented through the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

5. The Secretary,

Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

7. The Secretary,  
Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001

...Respondents

(By Shri.S.Sugumaran, ACGSC)

**OA NO.170/01833/2018**

K. Jayasimha,  
S/o K.S. Krishna Murthy,  
Aged 58 years,  
Residing at No. 75/3, Navneetha apartment,  
Kavilakshmisha Road,  
V V Puram, Bangalore 560 004

(By Advocate Shri.R.Ganesh Kumar)

...Applicant

Vs.

1. Union of India

Represented through the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

5. The Secretary,

Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,

C R Building, Queen's Road,  
Bengaluru

7. The Secretary,

Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001

...Respondents

(By Shri.S.Sugumaran, ACGSC)

**OA NO.170/01834/2018**

N. Manivanan,  
S/o K.C. Natesan,  
Residing at 2 EC-102, OMBR Layout,  
Chikkabanaswadi,  
Bangalore 560 043

(By Advocate Shri.R.Ganesh Kumar)

...Applicant

Vs.

1. Union of India

Represented through the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

5. The Secretary,

Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

7. The Secretary,

Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001.

...Respondents

(By Shri.S.Sugumaran, ACGSC)

**OA NO.170/01835/2018**

V.S. Bikkannavar,  
S/o Siddarayappa,  
Aged 59 years,  
Residing at H. No.146, Shri Chowdeshwari Nilaya,  
1<sup>st</sup> R Block, 20<sup>th</sup> B Main, Rajajinagar,  
Bangalore 560 010

(By Advocate Shri.R.Ganesh Kumar)

...Applicant

Vs.

1. Union of India

Represented through the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

5. The Secretary,

Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

7. The Secretary,

Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001.

...Respondents

(By Shri.S.Sugumaran, ACGSC)

**OA NO.170/01836/2018**

V.S. Patil Kulkarni,  
S/o Shivanagouda,  
Aged 59 years,  
Residing at No. 54, 9<sup>th</sup> Main, 21<sup>st</sup> Cross,  
N S Palya, BTM 2<sup>nd</sup> Stage, Bangalore 560 076

...Applicant

(By Advocate Shri.R.Ganesh Kumar)

Vs.

1. Union of India

Represented through the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

5. The Secretary,

Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

7. The Secretary,

Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001.

...Respondents

(By Shri.S.Sugumaran, ACGSC)

**OA NO.170/01837/2018**

D.M. Soori,  
S/o M.P Soori,  
Aged 59 years, Asst. Commissioner,  
Residing at Savera Bejaikotekani Road,  
Mangalore 575 004.

...Applicant

(By Advocate Shri.R.Ganesh Kumar)

Vs.

1. Union of India

Represented through the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

5. The Secretary,

Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

7. The Secretary,

Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001.

...Respondents

(By Shri.S.Sugumaran, ACGSC)

**OA NO.170/01838/2018**

Pramod Mannur,  
S/o N T Mannur,  
Aged 59 years, Residing at No. 247, 57<sup>th</sup> Cross,  
3<sup>rd</sup> Block, Rajajinagar  
Bangalore 560 010

...Applicant

(By Advocate Shri.R.Ganesh Kumar)

Vs.

1. Union of India

Represented through the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

5. The Secretary,

Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

7. The Secretary,

Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001.

...Respondents

(By Shri.S.Sugumaran, ACGSC)

**OA NO.170/01839/2018**

K.G. Ravindra  
S/o K.G. Gonappa,  
Aged 59 years,  
Residing at No. 120, 1<sup>st</sup> Cross, 1<sup>st</sup> Main,  
Vinayaka layout, Hebbal Kempapura,  
Bangalore

(By Advocate Shri.R.Ganesh Kumar)

...Applicant

Vs.

1. Union of India

Represented through the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

5. The Secretary,

Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,

C R Building, Queen's Road,  
Bengaluru

7. The Secretary,

Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001.

...Respondents

(By Shri.S.Sugumaran, ACGSC)

**OA NO.170/01841/2018**

B.H. Nandish,  
S/o B.H. Honnappagowda,  
Aged 60 years, Asst. Commissioner  
Residing at No. 86, 6<sup>th</sup> Cross Road,  
Further Extension of Mahalakshmi layout,  
Bangalore 560 086

(By Advocate Shri.R.Ganesh Kumar)

...Applicant

Vs.

1. Union of India

Represented through the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

5. The Secretary,

Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,

C R Building, Queen's Road,  
Bengaluru

7. The Secretary,

Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001.

...Respondents

(By Shri.M V Rao, Senior Panel Counsel)

**OA NO.170/01844/2018**

U.B. Chandrashekara,  
S/o G. Basave Gowda,  
Aged 62 years, Asst. Commissioner (Retd),  
Residing at D.No. 4124/A 27  
Sree Kalmardeeshwara Krupa,  
14<sup>th</sup> cross, 2<sup>nd</sup> main, Siddaveerappa Layout,  
Davanagere 577 004

...Applicant

(By Advocate Shri.R.Ganesh Kumar)

Vs.

1. Union of India

Represented through the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

5. The Secretary,  
Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

7. The Secretary,  
Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001.

...Respondents

(By Shri.M V Rao, Senior Panel Counsel)

**OA NO.170/01845/2018**

D P Umadevi,  
W/o S.N. Srekantaiah,  
Aged 60 years, Asst Commissioner (Retd),  
Residing at No. 167, Balaji regency, 1<sup>st</sup> Floor,  
1<sup>st</sup> Main, 2<sup>nd</sup> Cross, Canara Bank Colony,  
Nagarabhavi Road,  
Bangalore 560 072

(By Advocate Shri.R.Ganesh Kumar)

...Applicant

Vs.

1. Union of India

Represented through the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

5. The Secretary,  
Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

7. The Secretary,  
Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001.

...Respondents

(By Shri.M V Rao, Senior Panel Counsel)

**OA NO.170/01846/2018**

G.B. Jagadisha,  
S/o Basappa,  
Aged 63 years, Asst. Commissioner (Retd),  
Residing at Anugraha, 4<sup>th</sup> main road,  
Taravelbalu Badavene, Vidyanagar,  
Davanageri 577 005

(By Advocate Shri.R.Ganesh Kumar)

...Applicant

Vs.

1. Union of India

Represented through the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

5. The Secretary,

Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,

C R Building, Queen's Road,  
Bengaluru

7. The Secretary,

Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001.

...Respondents

(By Shri.M V Rao, Senior Panel Counsel)

**OA NO.170/01847/2018**

Ashok Vittal Rao Mane  
S/o Vitthal Rao,  
Aged 63 years, Asst. Commissioner (Retd),  
Residing at Flat No. 203, Ram-Sridhar Apartment,  
9<sup>th</sup> Main, 2<sup>nd</sup> Cross,  
BTM Layout, 2<sup>nd</sup> Stage,  
Bangalore 560 076.

(By Advocate Shri.R.Ganesh Kumar)

...Applicant

Vs.

1. Union of India

Represented through the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

5. The Secretary,

Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

7. The Secretary,

Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001.

...Respondents

(By Shri.M V Rao, Senior Panel Counsel)

**OA NO.170/01848/2018**

Ganapati Bhat Prasad,  
S/o Ganghar G,  
Aged 61 years, Asst. Commissioner (Retd),  
Residing at S2, No.52, Kubera Enclave,  
2<sup>nd</sup> Cross, Bhuvaneshwari Nagar, Hebbal,  
Bangalore 560 024.

(By Advocate Shri.R.Ganesh Kumar)

...Applicant

Vs.

1. Union of India

Represented through the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

5. The Secretary,

Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,

C R Building, Queen's Road,  
Bengaluru

7. The Secretary,

Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001.

...Respondents

(By Shri.M V Rao, Senior Panel Counsel)

**OA NO.170/01849/2018**

Gururaj Atgur,  
S/o Ramchandra Rao,  
Aged 61 years, Asst. Commissioner (Retd),  
Residing at Flat No. 318, 3<sup>rd</sup> Floor,  
SLV & V6, Golden Nest Apartment, Part B,  
21<sup>st</sup> Main Road, Nagadevanahalli, Mariyappanahalli  
(Inside Siddhaganga Arch),  
Bangalore 560 056.

...Applicant

(By Advocate Shri.R.Ganesh Kumar)

Vs.

1. Union of India

Represented through the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

5. The Secretary,

Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,

C R Building, Queen's Road,  
Bengaluru

7. The Secretary,

Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001.

...Respondents

(By Shri.M V Rao, Senior Panel Counsel)

**OA NO.170/01850/2018**

K.S. Venkatesh Murthy,  
S/o K. Shankaraiah,  
Aged 60 years, Asst. Commissioner (Retd),  
Residing at Ananya, Door No. 4-466B,  
Navagraha Colony, Alevoor Road,  
Manipal 576 104.

(By Advocate Shri.R.Ganesh Kumar)

...Applicant

Vs.

1. Union of India

Represented through the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

5. The Secretary,

Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,

C R Building, Queen's Road,  
Bengaluru

7. The Secretary,

Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001.

...Respondents

(By Shri.M V Rao, Senior Panel Counsel)

**OA NO.170/01851/2018**

K.R. Sridhara,  
S/o K. Ramaswamy,  
Aged 61 years, Asst. Commissioner (Retd),  
Residing at No. 303, 5<sup>th</sup> Main,  
H Block, Ramakrishnanagar,  
Mysore 570 022

(By Advocate Shri.R.Ganesh Kumar)

...Applicant

Vs.

1. Union of India

Represented through the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

5. The Secretary,

Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,

C R Building, Queen's Road,  
Bengaluru

7. The Secretary,

Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001.

...Respondents

(By Shri.M V Rao, Senior Panel Counsel)

**OA NO.170/01852/2018**

Ashok Kumar Mudhol,  
S/o Ishwarappa K Mudhol,  
Aged 61 years, Asst. Commissioner (Retd),  
Residing at Anugraha, Flat No. 108,  
Madhura Flats – II, Madhura Estate, Keshwapur,  
Hubballi 580 023.

(By Advocate Shri.R.Ganesh Kumar)

...Applicant

Vs.

1. Union of India

Represented through the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

5. The Secretary,

Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,

C R Building, Queen's Road,  
Bengaluru

7. The Secretary,

Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001.

...Respondents

(By Shri.M V Rao, Senior Panel Counsel)

**OA NO.170/01853/2018**

S.V. Srinivasan,  
S/o Late S.V. Chaari,  
Aged 62 years, Asst. Director (Retd),  
Residing at No. 48, Shop Street,  
Near K.R. Colony Bus Stop,  
Basavanagudi,  
Bangalore 560 004

(By Advocate Shri.R.Ganesh Kumar)

...Applicant

Vs.

1. Union of India

Represented through the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

5. The Secretary,

Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

7. The Secretary,

Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001.

...Respondents

(By Shri.M V Rao, Senior Panel Counsel)

**OA NO.170/01854/2018**

James S D'Souza,  
S/o Shahu S D'Souza,  
Aged 63 years, Asst. Commissioner (Retd)  
Residing at No. 366, 6<sup>th</sup> Cross, 28<sup>th</sup> Main,  
BTM Layout, 2<sup>nd</sup> Stage,  
Bangalore 560 076.

(By Advocate Shri.R.Ganesh Kumar)

...Applicant

Vs.

1. Union of India

Represented through the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

5. The Secretary,

Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,

C R Building, Queen's Road,  
Bengaluru

7. The Secretary,

Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001.

...Respondents

(By Shri.M V Rao, Senior Panel Counsel)

**OA NO.170/01855/2018**

S.B. Shingenavar,  
S/o Bheemappa,  
Aged 63 years, Asst. Commissioner (Retd),  
Residing at No. 317, Bhageerathi Dham,  
1<sup>st</sup> Additional Main Road, Bharathinagar,  
Dharwad 580 001.

(By Advocate Shri.R.Ganesh Kumar)

...Applicant

Vs.

1. Union of India

Represented through the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

5. The Secretary,

Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,

C R Building, Queen's Road,  
Bengaluru

7. The Secretary,

Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001.

...Respondents

(By Shri.M V Rao, Senior Panel Counsel)

**OA NO.170/01856/2018**

S.S. Gayakwad,  
S/o Sambhajirao Tulasiram Gaikwad,  
Aged 62 years, Asst. Commissioner (Retd),  
Now Residing at B1, Flat No. 102,  
Avon Housing Co Operative Society,  
Khadakakpada, near Axis Bank,  
Kalyan (West), Mumbai 421 301

...Applicant

(By Advocate Shri.R.Ganesh Kumar)

Vs.

1. Union of India

Represented through the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

5. The Secretary,  
Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,  
C R Building, Queen's Road,  
Bengaluru

7. The Secretary,  
Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001.

...Respondents

(By Shri.M V Rao, Senior Panel Counsel)

**OA NO.170/01857/2018**

T. Chandramouli,  
S/o T. Narayana,  
Aged 60 years, Asst. Commissioner (Retd),  
Residing at No. 7, 1<sup>st</sup> Main, Ward Office Road,  
Sanjayanagar,  
Bangalore 560 094.

(By Advocate Shri.R.Ganesh Kumar)

...Applicant

Vs.

1. Union of India

Represented through the Revenue Secretary,  
Ministry of Finance, Revenue Department,  
Central Board of Indirect Taxes and Customs,  
North Block, New Delhi

2. The Chairman,

Central Board of Indirect Taxes and Customs,  
Ministry of Finance, Revenue Department,  
North Block, New Delhi

3. The Principal Chief Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

4. The Commissioner, Central Tax,

C R Building, Queen's Road,  
Bengaluru

5. The Secretary,

Department of Personnel and Training  
New Delhi

6. The Pay and Accounts Officer, Central Tax,

C R Building, Queen's Road,  
Bengaluru

7. The Secretary,

Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001.

...Respondents

(By Shri.M V Rao, Senior Panel Counsel)

## ORDER

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

Heard. When this matter was taken up as there were several matters up with common consent OA 1621/2018 was taken as the leading case. The effect of non-functional grade on MACP is the issue.

2. The issue in nutshell is covered in the speaking order issued as Annexure A1, which we quote:

*OFFICE OF THE PRINCIPAL CHIEF COMMISSIONER OF CENTRAL  
TAX: BENGALURU  
(CADRE CONTROLLING AUTHORITY)  
P.B.NO.5400, CENTRAL REVENUE BUILDING, QUEEN'S ROAD,  
BENGALURU-560 001*

C.No.II/03/84/2013 Estt A(PCCO) Pt file Date:29.06.2018

**ORDER OF WITHDRAWAL OF III FINANCIAL UPGRADATION TO  
THE GRADE PAY OF RS.6600/- IN PB-3 UNDER MACP SCHEME  
GRANTED TO SUPERINTENDENTS (Group B Gazetted)**

*Sub: Withdrawal of 3<sup>rd</sup> financial upgradation to the Grade Pay of Rs.6600/- in Pay Band-3 of Rs.15600-39100/-reg.*

*Sri.H.K.Munegowda, Assistant Commissioner since 22.10.2014, who joined the department as Direct Recruit Inspector on 6.6.1983 was granted 3<sup>rd</sup> financial upgradation under Modified Assured Career Progression (MACP) Scheme to the Grade Pay of Rs.6600/- in PB 3 of Rs.15600-39100/- with effect from 6.6.2013 on completion of 30 years of service vide EO No.97/2013 dated 18.06.2013, while he was serving as Superintendent of Central Excise & Customs.*

2. The objection were raised by PAOs of Central Excise Bangalore and Mysore on eligibility for grant of 3<sup>rd</sup> MACP to the Grade Pay of Rs.6600/- in PB-3 to the officers who have already been granted one promotion and two financial upgradations viz. Non-Functional Grade (NFG/NFSG) to the Grade Pay of Rs.5400/- in PB-2 and 2<sup>nd</sup> financial upgradation under Assured Career Progression (ACP) Scheme to the Grade Pay of Rs.5400/- in PB-3. The said objections raised by the PAOs were based on the clarifications contained in-

- a) DOPT's Note dated 21.07.2010 addressed to Pr.CCA, CBEC, New Delhi wherein it was clarified that the benefit of Non-functional Grade (NFG/NFSG) granted to the Superintendent (Group B Gazetted) officers after completion of 4 years would be treated/viewed as upgradation in terms of para 8.1 of Annexure -I of OM dated 19.05.2009 and the same would be offset against one financial upgradation under MACP Scheme.
- b) Board's letter F.No.A-23011/29/2010-Ad.IIA dated 20.05.2011 which, interalia, stated that in terms of para 8.1 of Annexure of MACP Scheme, financial upgradation granted in the Grade Pay of Rs.5400/- in PB-2 and PB-3 would be counted as separate upgradation and would be offset against financial upgradation under the Scheme, and
- c) Board's letter F.No.A-23011/29(ii)/2010 Ad.IIA dated 06.05.2013 addressed to the Chief Commissioner, Central Excise, Jaipur Zone communicating that the demand that NFG/NFSG should not offset a financial upgradation under MACP scheme has not been agreed to by the DOPT for being against the MACP scheme (para 8.1 of the scheme).

3. Further, Board vide letter F.No.A-23011/29/2010-Ad.IIA dated 04.06.2014 (circulated vide this office E(G) SO No.13/2014 dated 04.07.2014) drawing reference to the above mentioned Board's letter dated 6.5.2013 addressed to the Chief Commissioner, Central Excise, Jaipur Zone, again clarified that NFG/NFSG granted during 01.01.2006 to 31.08.2008 would be counted/offset against the financial upgradation under MACP Scheme.

4. Shri.H.K.Munegowda, who had joinder as DR Inspector on 6.6.1983 had earned the following promotion/financial upgradations:

- (i) 1<sup>st</sup> financial upgradation under ACP scheme w.e.f. 9.8.1999,
- (ii) Promoted as Superintendent w.e.f. 23.9.2002,
- (iii) NFG/NFSG to the Grade Pay of Rs.5400/- in PB-2 w.e.f. 23.9.2006
- (iv) 2<sup>nd</sup> financial un under ACP Scheme to the Grade Pay of Rs.5400/- in PB-3 w.e.f. 6.6.2007 and
- (v) 3<sup>rd</sup> financial upgradation under MACP Scheme to the Grade Pay of Rs.6600 in PB-3 w.e.f 6.6.2013.

5. In the light of the above instructions of the Board, it was proposed to withdraw the 3<sup>rd</sup> financial upgradation to the Grade Pay of Rs.6600/- in PB-3 granted to Sri.H.K.Munegowda and also to recover the excess pay and allowances drawn and paid from the date of grant of the said 3<sup>rd</sup> financial upgradation under MACP Scheme.

6. In view of the above mentioned developments, a show cause notice C.No.II/03/84/2013 Estt A dated 4.8.2014 was issued asking him to show cause in writing on or before 29.08.2014, as to:

(i) *Why the 3<sup>rd</sup> financial upgradation to the Grade Pay of Rs.6600/- in PB-3 of Rs.15600-39100/- under MACP Scheme granted to him with effect from 6.6.2013 should not be withdrawn as he has already been granted one promotion and two financial upgradations as mentioned above, and*

(ii) *why the excess of pay and allowances drawn and paid to him from 6.6.2013 on account of grant of the said 3<sup>rd</sup> financial upgradation to the Grade Pay of Rs.6600/- in PB-3 under MACP Scheme should not be recovered.*

7. *In response to the SCN, the Officer made submissions through his advocate- M/s Phadke Associates vide letter Ref. No.123/2014 dated 14.9.2014, wherein he has referred the Board's clarification vide OM No.35034/3/2008-Estt(D) dated 9.9.2010 with regard to MACP which states that the upgradations under MACP SCHEME are to be granted in the immediate next higher Grade Pay in the hierarchy of the recommended revised pay band and Grade Pay as prescribed in the CCS(RP) Rules 2008. He has also contended that he may be granted the III MACP in PB-4 (Rs.37400-67000) with Grade Pay of Rs.8700/- and also be paid the due arrears of pay in the interest of justice. Further, he had requested to be heard in person and accordingly, he was granted a personal hearing on 17.12.2014.*

8. *During the personal hearing, on 17.12.2014 held by my predecessor, the officer made written submissions to be taken on record. The officer also stated that his case may be considered in terms of the provisions of MACP and also in line with the judgment dated 16.10.2014 of Hon'ble High Court of Madras in WP No.1135 of 2014, which is applicable to many other categories of central government employees; that in case of any adverse finding arrived by the deciding authority, it may lead to a situation where a junior will be drawing higher salary. He requested that the 3<sup>rd</sup> financial benefit provided to him should not be denied and the matter may be dealt sympathetically taking into consideration the recurring effect in future years on Grade Pay.*

9. *Further, the Officer in his written submission has stated that the issue of grant of MACP in the Grade Pay of Rs.6600/- appears to have been settled in view of the following judgments:*

- a) *Judgement dated 16.10.2014 of High Court of Chennai in the WP No.11535/2014*
- b) *Judgment of Hon'ble Supreme Court of India in the SLP No.7367/2013 and*
- c) *Judgement of Principal Bench, Hon'ble CAT in OA NO.904/2012 and 864/2014.*

9.1 *The Officer has stated that in view of the above, he is eligible for 3<sup>rd</sup> financial upgradation. Hence, the action proposed in the SCN be dropped.*

10. *While the issue was under examination, it came to the notice of this office that in an identical case, Board vide letter F.No.A23011/23/2015-Ad.II.A dated 26<sup>th</sup> May, 2015 addressed to the Chief Commissioner, Chennai Zone had directed them to implement the Order dated 8.12.2014 of the Hon'ble High Court of Madras in Writ Petition No.19024 of 2014 & M.P No.1 of 2014 filed by*

*Shri.R.Chandrasekaran, Supdt, Central Excise, Chennai Zone in OA No.675 of 2013. The order in the said Writ Petition direct the Department of Personnel, Public Grievances and Pensions to consider the issue of counting non-function scale as a financial upgradation for the purpose of MACP.*

11. *In pursuance of the above mentioned order, the DOPT had opined that Shri.R.Chandrashekaran has 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. 1.9.2008, and hence, 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. 4.6.2012 on completion of 30 years of service.*

12. *In the light of the clarification of the DOPT, a reference was made to the CBEC seeking clarification as to whether the same view can be adopted in respect of similarly placed officers in this zone.*

13. *The Board vide their letter F.No.A.23011/25/2015 Ad.II A dated 20.6.2016, clarified that the matter regarding counting of NFG/NFSG in the Grade Pay of Rs.5400/- in PB-2 to Superintendents as a financial upgradation had been re-examined in consultation with DOPT, and that DoPT in consultation with Department of Expenditure had advised that grant of NFG/NFSG was to be counted as one financial upgradation for the purpose of MACP scheme. Further, DOPT had advised that court cases including the case of Shri.R.Chandrashekaran may be agitated/defended as per the MACP Scheme. Further, it was also informed that their earlier letter No.A-23011/23/2015-Ad.II.A dated 26<sup>th</sup> May, 2015 addressed to Chief Commissioner, Chennai was treated to be withdrawn.*

14. *However, the Show Cause Notice was kept pending finalization in view of the letter dated 25.08.2016 received from the General Secretary, All India Association of Central Excise Gazetted Executive Officers, Karnataka Unit requesting to keep the withdrawal of benefit of 3<sup>rd</sup> MACP in abeyance till a final verdict is received on the contempt petition filed before the Hon'ble High Court of Chennai in the case of Shri.R.Chandrashekaran.*

15. *The Board vide letter F.No.A26017/203/2016 Ad.II A dated 7.12.2016 has requested all the Cadre Controlling Authorities to follow the guidelines of DOPT/CBEC on MACP scheme and has clarified that action may be taken in terms of DOPT's OM No.18/03/2015-Estt(Pay-I) dated 2.3.2016 with regard to recovery of wrongful/excess payment made to any official in respect of implementation of MACP scheme.*

16. *In view of the above, the SCN issued to Shri.H.K.Munegowda was taken upgradation for disposal. As the personal hearing in the instant case was held before the then Commissioner, Bangalore I Commissionerate, one more opportunity was granted to the Officer and accordingly a personal hearing was fixed for 9.5.2018 before the Commissioner, Bengaluru South Commissionerate, Bengaluru.*

17. *Shri.H.K.Munegowda attended the personal hearing on 9.5.2018. During the personal hearing, the officer reiterated the submissions made earlier and*

*requested to consider the judicial pronouncements and pass a fair and favourable order allowing the MACP benefits.*

## **FINDINGS**

18. *I have carefully gone through the provisions of the MACP Scheme; clarifications issued by the Department of Personal & Training and the CBEC and the submissions made by the officer, Sri.H.K.Munegowda.*

19. *The Showcause Notice has been issued to the Officer for withdrawing the benefit of 3<sup>rd</sup> financial upgradation to the Grade Pay of Rs.6600/- in PB 3 under MACP Scheme granted to him and consequential recovery of excess pay and allowances drawn and paid to him from 06.06.2013.*

20. *In his replies, the officer has submitted that the Non functional scale granted to the Grade Pay of Rs.5400/- in PB-2 cannot be treated as a financial upgradation as the same is not in the hierarchy of promotions. The officer has relied on the judgments pronounced by various Courts on the subject issue of MACP, which are discussed below:*

20.1 *The officer has relied on the order dated 16-10-2014 in WP No.11535 of 2014 passed by the Hon'ble Madras High Court in the case of Shri.S.Balakrishna Vs. UOI. The Hon'ble High Court in the said order has upheld the view taken by the Central Administrative Tribunal, Madras Bench in their order 22.7.2013 in OA No.280/2012 in a case filed by three officers from Enforcement Directorate who joined as direct recruit Asst. Enforcement Officers during 1975-76. On perusal of the Tribunal's orders and the High Court's order, it is seen that all the 3 applicants in the said case were granted 2<sup>nd</sup> financial upgradation on completion of 24 years as per the earlier ACP Scheme w.e.f. 1999/2000 and were granted third financial upgradation w.e.f. 1.9.2008 to the Grade Pay of Rs.6600/- in PB-3.*

20.2 *However, the Enforcement Directorate cancelled the orders granting 3<sup>rd</sup> financial upgradation to the GP of Rs.6600/- and issued a corrigendum granting Grade Pay of Rs.5400/- in PB-3 on the grounds that, as per para 8.1 of the Annexure to the OM dated 19.5.2009 , the Grade Pay of Rs.5400/- in PB-2 and Rs.5400/- PB-3 shall be separate Grade Pays for the purpose of financial upgradation under MACP Scheme.*

20.3 *The Tribunal held the view that Clause 8(1) of the Office Memorandum should be treated as corollary to Clause 8 and that Clause 8(1) would be applicable only to those Departments, which provide for promotion to the post carrying the same Grade Pay and held that unless the respondents are granted Grade Pay of Rs.6600/- in PB-3, it cannot be construed that they have been given 3<sup>rd</sup> Financial upgradation.*

20.4 *The Hon'ble Tribunal has relied on their own judgment in a batch of applications in OAs 821, 930, 931 and 1098 of 2010 with regard to the Central Excise Superintendent wherein it was held that in the case of Superintendents, while granting the 2<sup>nd</sup> ACP, their pay has to be fixed in PB-3 with Grade Pay of*

*Rs.5400/- and automatically they are eligible for Grade Pay of Rs.6600/- in PB-3. The Tribunal held that the applicants who are holding analogous posts of Enforcement Officers with that of Superintendent of Central Excise ought to be granted the said Grade Pay.*

*20.5 The Hon'ble High Court of Madras upheld the decision of the CAT, Madras Bench and quashed the impugned orders and restored the earlier orders granting benefit to the respondents.*

*21. Thus, it is seen that the applicants in the said case and Shri.H.K.Munegowda are not similarly placed in as much as the said applicants had received the 2<sup>nd</sup> ACP prior to 1.1.2006 i.e. prior to VI CPC scales coming into effect. In this department also, in the case of similarly placed officers i.e. officers who had received the 2<sup>nd</sup> ACP prior to 1.1.2006 were placed in PB-3 with Grade Pay of Rs.5400 on 1.1.06. There were granted the 3<sup>rd</sup> MACP to the next Grade Pay i.e. Grade Pay of Rs.6600 in PB-3.*

*22. The case of Shri.H.K.Munegowda is not similar in as much as he was not granted 2<sup>nd</sup> ACP prior to 1.1.2006 and consequently he was granted NFG/NFSG with Grade Pay of Rs.5400/- w.e.f. 1.1.2006 as he had completed 4 years as Superintendent and subsequently was granted 2<sup>nd</sup> ACP to the scale of PB-3 with Grade Pay of Rs.5400/- w.e.f. 6.6.207.*

*23. The officer has relied on the judgment of the Hon'ble Supreme Court in SLP No.7367/2013 filed UOI against the judgment of Hon'ble High Court of Chandigarh in CWP No.19387/2011 which confirmed the order of the CAT, Chandigarh Bench for grant of financial upgradation in the promotional hierarchy under MACP Scheme. The judgment dated 19.10.2011 of the Hon'ble High court of Punjab & Haryana in CWP No.19387/2011 has also been perused. The said case relates to treating the post of photocopier (an isolated post) on par with the Hindi Typist/LDC for the purpose of granting financial upgradations under the MACP Scheme and grant of financial upgradation under MACP Scheme to the Grade Pay associated with the next higher promotional post.*

*24. The judgment dated 26.11.2012 of the Hon'ble CAT Principal Bench, New Delhi in OA No.904/2012 relied upon by the officer, also relates to the Grade Pay to be given on grant of financial upgradation under the MACP Scheme. In the said case, the applicant who was drawing the Grade Pay of Rs.2400 in PB-2 was granted Grade Pay of Rs.2800/- being the next Grade Pay in the hierarchy of revised pay band and Grade Pay. Relying on the aforementioned judgment dated 19.10.11 of the Hon'ble High Court of Punjab and Haryana, the Hon'ble Tribunal held that the applicant is eligible for grant of financial upgradation under MACP Scheme to the Grade Pay associated with the next higher promotional post of Assistant i.e. Grade Pay of Rs.4600 instead of Rs.2800/-.*

*25. The judgment dated 12.3.2014 of the Hon'ble CAT Principal Bench, New Delhi in OA No.864/2014 cited also relates to the grant of financial upgradation under MACP Scheme to the Grade Pay in the next hierarchical post. In the said case, the applicant relying on the judgments of the Hon'ble High Court of Punjab*

& Haryana in CWP No.19387/2011 and the order of the Hon'ble CAT, principal Bench, New Delhi in 904/2012 etc. had sought for the grant of Grade Pay of Rs.5400 (instead of Rs4600) after the Grade Pay of Rs.4200, in the promotional hierarchy, while granting financial upgradation under the MACP Scheme. The Hon'ble CAT, Principal Bench, New Delhi has held that once an order has been passed by them and upheld by the Supreme Court, there is no question of waiting for an approval from the Government department for implementation of the same. Accordingly, the respondents were directed to consider the representation of the applicant in the light of the judgments and decide their case.

26. Thus, the cases involved in the above judgments are not exactly similar to the cases of the officer. Notwithstanding the same, as regards the interpretation of para 8.1 of the Annexure to DoPT's OM dated 19.5.2009 by the Hon'ble Tribunal, Madras upheld by the Hon'ble High Court of Madras, and the judgement dated 19.10.2011 of the Hon'ble High court of Punjab & Haryana in CWP No.19387/2011, the judgment dated 26.11.2012 of the Hon'ble CAT Principal Bench, New Delhi in OA No.904/2012 and the judgment dated 24.08.2012 of the Hon'ble High Court of Delhi in W.P (C)5146/2012 in the case of UOI VS Delhi Nurses Union (Regd.) and another, wherein it has been held that the financial upgradation under the MACP Scheme has to be associated with the next higher promotional post, I find that, in the absence of specific orders from the DoPT modifying the existing features of the MACP Scheme, the existing features/provisions of the Scheme and related instructions issued by the DoPT and the CBEC shall hold.

27. The withdrawal of the 3<sup>rd</sup> financial upgradation granted to the officers has been proposed in the SCN in view of the instructions/clarifications contained in the DoPT's note dated 21.07.2010 and Board's letters F. No.A-23011/29/2010-Ad.IIA dated 20.05.2011 and F.No.A-23011/29(ii)/2010-Ad.IIA dated 6.05.2013.

27.1 The DoPT vide note dated 21.7.2010 addressed to Pr.CCA, CBEC, New Delhi has clarified that the benefit of non functional grade granted to the Superintendent (Group B) officers after completion of 4 years would be treated/viewed as upgradation in terms of para 8.1 of Annexure-I of OM dated 19.05.2009 and the same would be offset against the financial upgradation under MACP SCHEME.

27.2 In the Board's letter F. No.A-23011/29/2010-Ad.IIA dated 20.05.2011 and F.No.A-23011/29(ii)/2010-Ad.IIA dated 6.05.2013, addressed to Chief Commissioner of Central Excise, Jaipur Zone, it is clarified that

- (i) Prior to 01.09.2008, financial up-gradations under ACP Scheme were being granted in the promotional hierarchy and only functional promotion(s) is/are counted for the purpose of the Scheme. Besides, there is no provision for counting 'Non functional scale' for the purpose of ACP Scheme. Hence, there would be no effect on grant of Non functional scale in PB-2 with Grade Pay of Rs.5400/- during the period from 01.01.2006 to 31.08.2008 as the same is not counted under

*ACP Scheme and it would not be offset against financial up-gradation under the scheme.*

(ii) *In the MACP Scheme, the financial up-gradation is granted 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. In terms of para 8.1 of Annexure of MACP Scheme, financial up-gradation granted in the Grade Pay of Rs.5400/- in PB-2 and PB-3 would be counted as separate up-gradations and would be offset against financial up-gradation under the Scheme.*

27.3 *Thus, although the 'Non functional scale' granted to the Superintendents to the Grade Pay of Rs.5400/- in PB-2 on completion of 4 years of regular service is not counted while granted 2<sup>nd</sup> financial upgradation under the ACP Scheme, the said Non functional scale has to be counted as an upgradation for the purpose of MACP. Thereby Superintendents who have been granted both 'Non functional scale' of Rs.5400 in PB-2 and '2<sup>nd</sup> financial upgradation' under ACP Scheme between the period from 1.1.2006 to 31.8.2008 to the Grade Pay of Rs.5400/- in PB-3 are not eligible for grant of 3<sup>rd</sup> financial upgradation under the MACP Scheme as they have earned on promotion and two financial upgradations.*

28. *The above issue of counting the Non functional scale of Grade Pay of Rs.5400/- in PB-2 granted to the Superintendents on completion of 4 years of service as a financial upgradation for the purpose of MACP Scheme in terms of para 8.1 of MACP Scheme, has not been dealt in the above referred cases.*

29. *The matter has attained a finality as Board's vide letter F. No.A-23011/25/2015-Ad.IIA dated 20.06.2016, has clarified that the matter regarding counting of NFSG in the Grade Pay of Rs.5400/- in PB-2 to Superintendents as a financial upgradation had been re-examined in consultation with DoPT, and that DoPT in consultation with Department of Expenditure had advised that grant of NFG/NFSG was to be counted as one financial upgradation for the purpose of MACP Scheme. Further, DoPT had advised that court cases including the case of Shri.R.Chandrashekaran may be agitated/defended as per the MACP Scheme, and accordingly, the financial upgradation granted to the officers in the Grade Pay of Rs.6600/- in PB-3 needed to be withdrawn.*

30. *On careful consideration of the various judgements quoted by the Officer and also the extant instructions available, the issue is summed up as follows :*

- i. *MACP Scheme is applicable purely on personal basis with intention to provide financial relief to avoid stagnation and in the circumstances no comparison exists nor any anomaly be claimed.*
- ii. *Various departments though coming under the umbrage of the nodal department, the DoPT have their own grades, pay scales and promotional hierarchies. In these circumstances, the Courts have gone through the individual entitlements and have passed orders to keep in spirit the welfare of the petitioners.*

- iii. *The judgements are applicable only to the petitioner and the findings are not explicit to accommodate or read any other similarly placed situations, thus restricting the spirit to the individual who has approached the court for relief. I therefore find that there are legal constraints to expand the scope of the judgements quoted by the Officer as specifically applicable to all.*
- iv. *As on date no specific order nullifying or modifying or quashing para 8.1 of the Scheme has been issued. The para 8.1 of the scheme still exists and has not seen suitable modification in the 7<sup>th</sup> CPC. These facts testimony the need to read para 8.1 of the scheme as it exists.*

31. *In the case on hand, Shri.H K Munegowda has earned one promotion to the grade of Superintendent and 2 upgradations i.e. NFG/NFSG to the Grade Pay of Rs.5400/- in PB-2 w.e.f. 23.09.2006 and 2<sup>nd</sup> financial upgradation under ACP Scheme to the Grade Pay of Rs.5400/- in PB-3 corresponding to the pre-revised scale of pay of Rs.8000-13500/- w.e.f. 6.6.2007. Thus no case exists for providing any further upgradation in Grade Pay within the meaning/scope and parameter of MACP Scheme and hence the 3<sup>rd</sup> financial upgradation to the Grade Pay of Rs.6600/- in PB-3 granted has to be withdrawn and the excess amount drawn and paid to him consequent to grant of 3<sup>rd</sup> MACP will have to be recovered.*

32. *Accordingly, I pass the following Order.*

**ORDER**

- 1. *I hereby withdraw the 3<sup>rd</sup> Financial Upgradation to the Grade Pay of Rs.6600/- in PB-3 under MACP Scheme granted to Shri.H.K.Munegowda, Assistant Commissioner with effect from 6.6.2013 vide EO No.97/2013 dated 18.06.2013.*
- 2. *I further order recovery of pay and allowances drawn and paid, if any to him consequent to grant of 3<sup>rd</sup> financial upgradation to the Grade pay of Rs.6600/- in PB-3 under MACP Scheme.*

*Sd/-*

*(G NARAYANASWAMY)  
APPOINTING AUTHORITY*

*To:*

*Shri.H.K Munegowda,  
Assistant Commissioner (Retd)  
No.1537, 1<sup>st</sup> Main,  
Judicial Layout,  
GKV Post,  
Bengaluru-560 065.*

While the issue was under examination, the Board had directed the Chief Commissioner, Chennai Zone to implement the order dated 08.12.2014 of

the Hon'ble High Court of Madras in Writ Petition No.19024/2014 filed by one Shri.R.Chandrashekaran, Superintendent, Central Excise, Chennai Zone basically in OA No.675/2013. The order in the Writ Petition of the Madras High Court directed the DOPT to consider the issue of counting non functional scale as financial upgradation or not, for the purpose of MACP.

**3. The question urged before us is that the non functional grant whether it will amount to a non stagnation accommodation as provided by the judgment of the Hon'ble Apex Court?** But other Benches of Tribunals have also taken up this matter, particularly the Ahmedabad Bench, in a series of cases which it had considered in OA No.581/2016 along with the several other cases which was decided on 22.09.2017, which we quote.

**“O R D E R**

*Per : Hon'ble Shri M. Nagarajan, Member (Judicial)*

**O.A.Nos. 581, 582 and 583 of 2016**

**1.** *The applicants in OA Nos. 581/2016, 582/2016 and 583/2016 are serving as Superintendent / Assistant Commissioners of Central Excise and Customs. Their common grievance in their respective O.A. is, the apprehension of the withdrawal of the benefit of 3<sup>rd</sup> financial upgradation under the Modified Assured Career Progression Scheme (MACPs) to the grade of Rs. 6600/- along with recovery process being initiated in lieu of the same. It is the specific contention of these applicants that on completion of 30 years of service, they are entitled to be given the 3<sup>rd</sup> financial upgradation under MACP by placing them in the pay band - III with Grade Pay of Rs. 6600/. All the applicants in these O.As have completed 30 years of service ranging from 1.1.2012 to 31.8.2014 and accordingly between 2012 and 2015 all were granted the benefit of 3<sup>rd</sup> financial upgradation under the MACP Scheme and their pay came to be re-fixed.*

**2.** *The Central Board of Excise & Customs (CBEC) by its communication dated 20.6.2016 issued a clarification regarding grant of 3<sup>rd</sup> financial upgradation under the MACP to the Superintendents who were granted the non functional grade pay of Rs. 5400/- in pay band – 2. The said communication dated 20.6.2016 reads as under :-*

*"P.No.A-23011/25/2015-Ad.IIA  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs  
xxxxxxxx*

*North Block  
New Delhi, the 20<sup>th</sup> June, 2016*

*Subject : Clarification on 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 offices / 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 PB-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 provision in Para 8.1 of Annexure-1 of OM No. 35034 / 3 /2008 – Estt (D) dated 19<sup>th</sup> May, 2009 read with FAQ No. 16 (copy enclosed) which indicate that the Non functional scale in 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. Chandrasekaran may be agitated / defended as per the MACP Scheme vide DoP&T OM dated 19.5.2009.*

*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 Shri R. Chandrasekaran, on behalf of Union of India.*

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

*3. Being aggrieved by the clarification contained in the above communication dated 20.6.2016, the applicants have presented the instant O.As seeking the following reliefs :*

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

*(B) Be pleased to quash and set aside Para 8.1 of Annexure 1 of OM No. 35034 / 3 / 2008 – Estt. (D) dated 19<sup>th</sup> May, 2009 (Annex. A1) and further be pleased to declare the same to be ultra-vires the MACP Scheme as well as the 6<sup>th</sup> Pay Commission’s Recommendations.*

*(C) Be pleased to quash and set aside Instruction dated 22.06.2015 issued by the Pr. Chief Controller of Accounts CBEC, New Delhi under F.No. Coord. / Expdt. / O.A. 675 of 2013 / 2015-16 at Annex. A2 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 Upgradation under the Modified Assured Career Progression Scheme.*

*(F). Be pleased to declare that the present applicants are eligible to be granted the benefit of 3<sup>rd</sup> MACP by way of fixing the pay of the present applicants in PB-3 with pay of Rs. 15600-39100 with Grade Pay Rs. 6600/-.*

*(G) Be pleased to direct the respondents to grant the benefit of 3<sup>rd</sup> MACP to the present applicants by fixing their pay at Rs. 15600-39100/- with Grade Pay Rs. 6600/- in PB-3 with all consequential benefits including arrears of pay.*

*(H) Be pleased to direct the respondents to issue appropriate orders to grant the benefit of 3<sup>rd</sup> MACP to all eligible persons.*

*(I) Be pleased to impose appropriate costs on the respondents.*

*(J) 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 interests of justice and equity.”*

#### **O.A.Nos. 653, 654 and 655 of 2016**

4. The applicants in OA Nos. 653, 654 and 655 of 2016 are also serving as Superintendent / Assistant Commissioner of Central Excise and Customs. Their grievance is common. They claim that they are entitled to be given the 3<sup>rd</sup> financial upgradation by placing them in the pay band – 3 with grade pay Rs. 6600/-, accordingly the same was granted to them placing them in the pay band – 3 with grade pay Rs. 6600/-, but subsequently withdrawn and they were given only the grade pay of Rs.5400/-. Thus, the main grievance of the applicants in this batch of applications is as to withdrawing the 3<sup>rd</sup> financial upgradations granted to them. The prayer of all these applicants in their respective applications is verbatim to that of the one extracted at a para 3 above.

**O.A.NO. 656 of 2016**

5. The applicants in O.A. No. 656 / 2016 are retired employees of the Department of Central Excise and Customs. Their common grievance is as to the withdrawal of the 3<sup>rd</sup> financial upgradation granted to them in the grade pay of Rs. 6600/- along with recovery process initiated in lieu of the same. Their prayer is also akin to the prayer of the one extracted at para No. 3 above.

**O.A.Nos. 133 and 134 of 2017**

6. The applicants in OA No. 133 and 134 of 2017 are also serving as Superintendent of Central Board of Excise & Customs. Their common claim against the respondents is that on completion of 30 years of service, they are entitled for the 3<sup>rd</sup> financial upgradation by placing them in the pay band – 3 with grade pay of Rs. 6600/-, whereas, they are given only the grade pay of Rs. 5400/. It is contended by them that they are entitled for the 3<sup>rd</sup> financial upgradation with grade pay of Rs. 6600/- but, the same is denied to them illegally. The reliefs sought by these applicants in their respective OAs are also the very same reliefs as that of the one extracted at para 3 above.

7. Thus, it is clear that the reliefs sought by the applicants in all the above OAs, are identical. The grounds and the contentions urged in support of their grievance and claim, are also common. Hence, all these OAs are called together and now tagged with each other and are taken up together for common order.

8. Pursuant to the notice of the O.A., the respondents entered appearance and filed their detailed reply, inter alia, contending therein that the impugned orders do not suffer from any legal infirmity and that the applicants are not entitled for any of the relief as sought by them. By placing reliance upon the orders of this Bench of the Tribunal dated 16.10.2015 in OA No. 18/2015 and, the orders of the Kolkata Bench of this Tribunal dated 28.4.2016 in OA No. 195/2014, they contend that the applicants are not entitled for any of the reliefs sought by them and pray that the OAs be dismissed.

9. When the matter is taken up for hearing, on my specific query to Shri N S Kariel as to whether the issues involved in these OAs are identical to the issue which was dealt with and decided by a Division Bench of this Tribunal by the order dated 28.07.2017 in OA 247/2017, he submits that he will leave it to the Tribunal and the Tribunal may proceed to pass appropriate order.

10. In view of the above submission of Shri N S Kariel, the first question is as to whether these OAs can be disposed of in terms of the order dated 28.07.2017 in OA 247/2017 (**Bajranglal v/s Union of India**). In the process, I have perused the facts stated, grounds urged, the documents annexed thereto and the reliefs sought by the applicant in all the above OAs and compared the same with the facts stated, grounds urged, the documents annexed thereto and the reliefs sought by the three applicants in **Bajranglal (supra)**. The relief column in the said OA 247/2017 (**Bajranglal**) is as under:-

“VIII.A Be pleased to allow the application.

B Be pleased to quash and set aside Para 8.1 of Annexure I of OM No.35034/3/2008-Estt.(D) dated 19<sup>th</sup> May 2009 (Annex. A1) and further be pleased to declare the same to be Ultra-vires the MACP Scheme as well as the 6<sup>th</sup> Pay Commission's Recommendations.

C Be pleased to quash and set aside instruction dated 22.06.2015 issued by the Pr. Chief Controller of Accounts, CBEC, New Delhi under F.No.Coord/Expdt./O.A.675 of 2014/2015-16 at Annex. A2 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 Upgradation under the Modified Assured Career Progression Scheme.

F Be pleased to declare that the present applicants are eligible to the benefit of 3<sup>rd</sup> MACP by way of fixing the pay of the present applicants in PB-3 with pay of Rs.15600-39,100/- with Grade Pay of Rs.6600/-.

G Be pleased to direct the respondents not to disturb the benefit of grant of 3<sup>rd</sup> MACP in the pay scale of Rs.15600-39,100/- with Grade Pay Rs.6600/- in PB-3 to the present applicants.

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 applicable and in the interests of justice and equity.”

11 The relief column at para-8 of the OA in all the above OAs are identical to each other. The relief column at para-8 in OA 581/2015 is as under:-

“VIII A Be pleased to allow this Application.

B Be pleased to quash and set aside Para 8.1 of Annexure I of OM No.35034/3/2008-Estt.(D) dated 19<sup>th</sup> May 2009 (Annex. A1) and further be pleased to declare the same to be Ultra-vires the MACP Scheme as well as the 6<sup>th</sup> Pay Commission's Recommendations.

C Be pleased to quash and set aside Instruction dated 22.06.2015 issued by the Pr. Chief Controller of Accounts, CBEC, New Delhi under F.No.Cood/Expdt./O.A.675 of 2013/2015-16 at Annex. A2 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 Upgradation under the Modified Assured Career Progression Scheme.

F Be pleased to declare that the present applicants are eligible to be granted the benefit of 3<sup>rd</sup> 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 3<sup>rd</sup> MACP to the present applicant by fixing their pay at Rs.15600-39,100/- with Grade Pay Rs.6600/- in PB-3 with all consequential benefits including arrears of pay.

*H Be pleased to direct the respondent to issue appropriate orders to grant the benefit of 3<sup>rd</sup> MACP to all eligible persons.*

*I Be pleased to impose appropriate costs on the respondents.*

*J 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 interests of justice and equity. ”*

**12** *A comparison of the relief columns in **Bajranglal** with that of the reliefs sought by the applicants in the above OAs reveal that the reliefs sought by the applicants are nothing but verbatim of the reliefs sought by the applicants in **Bajranglal**.*

**13** *All the above OAs are accompanied by M.As. for condonation of delay. I have carefully perused the MAs and find that delay relates to the challenge to para 8.1 of the MACP Scheme dated 19<sup>th</sup> May, 2009. It is the case of the applicants that the cause of action to challenge the said para 8.1 of the said OM dated 19<sup>th</sup> May, 2009 arose only on and after the issuance of the impugned clarification dated 20.6.2016. Their specific case is that but for the said clarification dated 20.6.2016 there is no occasion for them to challenge the said para 8.1 of the MACP Scheme. I am satisfied with the reasons. Hence the delay in not making the OA in so far as the same relates to the prayer at para 8.1 of the said Scheme is condoned. The respective MAs in all the OAs stands allowed.*

**14** *By the order dated 28.07.2017 a Division Bench of this Tribunal declined to entertain the said OA 247/2017 on the ground that the same would serve no purpose in view of the fact that the issue is pending consideration before the Hon'ble Supreme Court and rejected the same. The applicants in OA No. 247/2017 were represented by Shri N.S.Kariel. The contentions urged and argued by Shri N S Kariel in the said OA 247/2017 and the grounds and contentions urged in these OAs are similar. Neither any extra grounds is urged nor any extra relief is sought by the applicants other than the one sought by the applicants in **Bajranglal**. On perusal of the pleadings, documents annexed thereto and the reliefs sought by the applicants in these OAs and comparing the same with that of the facts pleaded, grounds urged and reliefs sought in **Bajranglal**, I do not find that the facts and circumstances of the cases on hand are in no way different from that of the facts and circumstances of the case in **Bajranglal**.*

**15** *That in view of the orders of the Hon'ble Chairman dated 20.01.1992 at Appendix III to CAT Rules of Practice, the subject matter of these OAs requires to be heard and decided by a Bench of two Members. It is needless to mention that a subsequent Division Bench is bound by the earlier Division Bench judgment of the Tribunal. Even if a subsequent Division Bench forms a different opinion, it can only refer the matter to the Hon'ble Chairman for constituting a Full Bench/Larger Bench, but can't over rule the earlier judgment.*

**16** *I have carefully perused the order of the Hon'ble Chairman dated 20.01.1992 at Appendix III of CAT Rules of Practice. It deals with a situation with respect to a matter coming up for admission/preliminary hearing for the first time. The order at Appendix III do not preclude a Single Member Bench of*

this Tribunal to dispose of a matter which fall outside the classes of cases mentioned in the schedule to the Appendix I of CAT Rules of Practice, where the facts and circumstances involved and the points/questions to be determined stand on similar footing in all respects. There is no restriction or requirement in the order at Appendix III, for a Single Member Bench to dispose of a matter, the subject matter of which is fully covered by the orders of a Division Bench. Therefore, in such circumstances, the jurisdiction of a Single Member Bench under Section 14 of the Administrative Tribunals Act 1985 does not stand ousted. It is already pointed out that the cases of all the applicants in the above OAs are identical to that of the applicants in **Bajranglal**. The Advocates who represents the applicants in the above OAs and the Advocate for the applicants in **Bajranglal** are one and the same. It is also to be noted that even in **Bajranglal's** case, this Tribunal has not given any specific finding on the issue that arose for consideration in this OA on the ground that the subject matter is seized of by the Hon'ble Supreme Court in the following cases.

- (i) SLP No.22181/2014- Union of India v/s Reeta Devi
- (ii) SLP No.23333/2014-Union of India v/s Babu Ram & Ors
- (iii) SLP No.23335/2014-Union of India v/s. O.P.Bhadhani
- (iv) SLP (CC) 10436/2014-Union of India v/s Dhirender Singh &
- (v) SLP No.21803/2014 in Union of India v/s M V Mohanan Nair

17 I may further observe that a Division Bench of this Tribunal had an occasion to decide an issue with reference to the judgment of the Hon'ble High Court of Punjab and Haryana in CWP No.19387/2011 (**Union of India v/s Rajpal**) which is followed by the Hon'ble High Court of Madras in **Union of India V/s S Balakrishnan** in Writ Petition No.11535/2014 and **R Chandrasekharan v/s Union of India in Writ Petition No.19024/2014** and the judgment of Hon'ble High Court of Kerala in OP(CAT) 2000/2013 and dismissed the claim in OA 369/2011 (**Shri Hasmukh v/s Union of India**). The applicant in the said OA namely **Shri Hasmukh B Desai** approached the Hon'ble High Court of Gujarat in SCA No.4464 of 2016. A Division Bench of the Hon'ble High Court of Gujarat by its order dated 28.06.2016 was pleased to dispose of the said petition. The relevant portion of the judgment in the said SCA No.4464 of 2016 dated 28.06.2016 is as under:-

“3 At the outset it is required to be noted that the dispute is with respect to grant of benefit of 3<sup>rd</sup> MACP Scheme w.e.f. 01.11.2011. It is not in dispute that against the judgment and order passed by Kerala High Court, of which reliance was placed by the petitioner, Special Leave Petition is pending before the Hon'ble Supreme Court. Therefore, a such the aforesaid issue is at large before the Hon'ble Supreme Court and it cannot be disputed that whatever decision of the Hon'ble Supreme Court will bind to all, including the petitioner and the respondent authorities.

4 Under the circumstances and in view of the above, the present petition is disposed of by observing and direct that whatever the outcome of Special Leave Petition (C) No.21813/2014 (CC No.10791/2014) shall be implemented. If the issue is held in favour of the employee the respondent authorities are bound to apply the

*same in the case of the petitioner and if the issue is held in favour of the Department, in that case, nothing further is required to be done by the Department.*

5 *With the aforesaid the present petition is disposed of. However, it is observed that in case the issue is held to be in favour of the employee by the Hon'ble Supreme Court, the same benefit be given to the petitioner without in any manner being influenced by any of the observations made in the impugned order."*

18 *The above portion of the judgment of Hon'ble High Court of Gujarat also comes to the aid of my view that no useful purpose would be served in keeping these OAs pending. Thus, by reiterating my view that no purpose would be served in keeping the OAs pending in view of the fact that the issues involved in these OAs were already dealt with and disposed of by this Tribunal in **Bajranglal** case (OA 247/2017) (supra), I have no hesitation to dispose of these OAs in terms of order dated 28.07.2017 in OA 247/2017 (**Bajranglal**).*

19 *The argument advanced and the contentions urged by Shri N S Kariel in **Bajranglal** were dealt with by the Division Bench and the same can be seen from the orders in **Bajranglal** commencing from paras 9 to 23 which are extracted hereunder:*

Para 9 to 23 in Bajranglal is as under:-

"9 Heard Shri N S Kariel, learned counsel for the applicant. Perused the pleadings and the documents annexed thereto.

10 *Initially the matter came up for preliminary hearing on 20.6.2017 and at the request of the learned counsel for applicant, the case was adjourned to 23.06.2017. On 23.06.2017 Shri N S Kariel, the learned counsel for the applicant argued that the applicants are similarly situated persons to that of said Shri S Balakrishnan and Shri R Chandrasekaran. The respondents having taken a conscious decision to implement judgment of Hon'ble High Court of Madras dated 08.12.2014 in R Chandrasekaran (supra) by issuing the letter dated 26.05.2015 vide Annexure A/9, arbitrarily for no reason withdrew the same by the impugned order dated 20.06.2016 vide Annexure A/3. He argued that the judgment in R Chandrasekaran (supra) is a judgment in rem and as such the action on the part of the respondents in restricting the same only to Shri R Chandrasekaran is an arbitrary one. He further pointed out that the view taken by the Hon'ble Madras High Court in S Balakrishnan (supra) came to be confirmed by the Hon'ble Supreme Court in view of the fact that the SLP filed against the judgment in S Balakrishnan came to be dismissed by the Hon'ble Supreme Court by its order dated 31.08.2015 in SLP No.15396/2015 (Annexure A/7). He submitted that in view of the dismissal of the said SLP, it is clear that the issue had attained finality and as such the respondents ought not to have issued the impugned orders dated 20.6.2016 and 22.06.2015 at Annexures A/3 and A/2 respectively. He argued that once the DoP&T and CBEC having accepted the judgment in R Chandrasekaran (supra) and implemented the same, there can be no occasion for them to take a*

*contrary decision that the Non functional scale in grade pay of Rs.5400/- in pay band - 2 is to be treated as a financial upgradation under MACPS.*

11 *By placing much emphasis upon the judgment of Honble Madras High Court in S Balakrishnan (supra) and R Chandrasekaran (supra), Shri N S Kariel argued that the applicants are absolutely eligible for the benefit of third financial upgradation under MACPS since they are identical and similarly situated persons to that of the said Shri S Balakrishnan and R Chandrasekaran in all respects. Therefore, the clarification dated 20.06.2016 cannot be sustained as it runs counter to the decisions of the Hon'ble Madras High Court in the said cases, he argued and prayed that notice on the OA be issued to the respondents and they be called upon to show cause as to why the clarification dated 20.06.2016 and the consequential letter dated 22.06.2016 respectively at Annexures A/3 and A/2 shall not be quashed and the declaration as well as the directions sought by the applicants shall not be granted.*

12 *On perusal of the documents annexed to the OA, we are of the opinion that the facts relating to their service particulars including the grant of financial upgradations cannot be disputed. It is already stated that the grievance is as to the order dated 20.02.2016 vide Annexure A/3 by which certain clarifications were issued relating to the question i.e.*

*“Whether non-functional grade pay of Rs.5400/- in pay band 2 granted to the Superintendents on completion of four years service can be counted as one financial upgradation for the purpose of MACPS?”*

*The DoP&T and the Ministry of Expenditure having regard to the provisions of the MACPS dated 19.05.1999 clarified/opined and answered the above question in the affirmative. The impugned order dated 20.06.2016 vide Annexure A3 is pursuant to and in terms of the clarification/opinion of the DoP&T and the Ministry of Expenditure. Thus the question to be determined is as to the interpretation of the MACPS and not with reference to any facts.*

13 *The specific contention of Shri N S Kariel was that the clarification furnished in the impugned order at Annexure A3 is in utter disregard to the judgment of the Hon'ble High Court of Judicature at Madras in S Balakrishnan (supra) and R Chandrasekaran (supra). The reliefs sought in the OA is solely on the strength of the judgment in S Balakrishnan (supra) and R Chandrasekaran (supra). Therefore the question is that whether the judgment in S Balakrishnan (supra) and R Chandrasekaran (supra) attained finality and that whether the respondents are bound by the said judgments. Shri N S Kariel contended.*

*(i) that the Hon'ble Madras High Court had categorically held that the MACPS envisages placement in the immediate next higher Grade Pay in the hierarchy of the recommended revised pay band and Grade pay.*

(ii) that it is further held therein that the financial upgradation under the scheme will be available whenever an employee has spent ten years in the same grade pay.

(iii) that it is also held therein that the respondents failed to interpret the scheme in a meaningful manner.

(iv) that the Hon'ble High Court of Madras in *S Balakrishnan (supra)* and *R Chandrasekaran (supra)* followed the judgment of the Hon'ble High Court of Punjab and Haryana in the case of *Union of India v/s Rajpal (CWP No.19387/2011 decided on 19.10.2011)*.

(v) That the judgment in *S Balakrishnan (supra)* attained finality in view of the dismissal of the SLP No.15396/2016 against the judgment in *S Balakrishnan (supra)* on 31.08.2015 by the Hon'ble Supreme Court.

(vi) that the issue is no more res-integra.

14 For the reasons stated hereunder, we are of the opinion that

(i) That the issue did not attain finality.

(ii) The Hon'ble High Court of Madras did not give any specific finding on the issue relating to the interpretation of the MACPs.

(iii) The dismissal of the SLP No.15396/2016 against the judgment in *S Balakrishnan (supra)* does not result in affirmation or confirmation or approval of the view in *S Balakrishnan (supra)* and the same does not constitute any declaration of law or a binding precedent.

(iv) The views and findings of the Hon'ble High Court of Punjab and Haryana in *Union of India v/s Rajpal* stands stayed by the Hon'ble Supreme Court,

(v) the issue is sub judice.

(vi) The Hon'ble Delhi High Court upheld a similar clarification issued in consultation with the DoPT and Ministry of Expenditure in the case of *Union of India v/s All India CGHS Employees Association and Others (CWP No.8515/2014 decided on 09.11.2016)* and certain other cases.

(vii) We are bound by the views and findings of the Hon'ble High Court of Delhi in *All India CGHS Employees Association (supra)*.

15 Whether the Hon'ble High Court of Madras had given any specific finding.

15.1 We have carefully gone through the judgments in *S Balakrishnan (supra)* and *R Chandrasekaran (supra)*. On going through the judgment

in *S Balakrishnan* (Annexure A/6), we find that the Hon'ble High Court of Madras while dismissing the Writ Petition of the Union of India followed the judgment of Hon'ble High Court of Punjab and Haryana dated 19.10.2011 in the case of Union of India v/s Rajpal in (WP No.19387/2011) as can be seen at the concluding part of the said judgment, which reads as under:-

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.

19 In the upshot, we dismiss the writ petition. Consequently, the connected MP is closed. No costs."

15.2 Similarly in *R Chandrasekaran* (supra) also the Hon'ble High Court of Madras followed the judgment of Hon'ble High Court of Punjab and Haryana in Rajpal (supra). However, in *R Chandrasekaran*, the Hon'ble High Court did not give a categorical finding as to whether the non-functional Grade Pay can be set-off against financial upgradation under the MACP or not? On the other hand it has remanded the matter to the DoP&T. The operative portion in *R Chandrasekaran* is as under:-

"15 The Central Administrative Tribunal, Madras Bench issued a direction dated 14 March 2012 in O.A. No.140 of 2012 to the Ministry of Personnel and Training to pass a reasoned order taking into account the representation submitted by the petitioners therein. The Department of Revenue passed a detailed order in the light of the demand made by All India Association of Central Excise Gazetted Executive Officers. The said order clarified the earlier instructions in a limited manner. It is a matter of record that different departments have interpreted the clarification in different manner and the same resulted in this unfortunate situation.

16 The Customs and Central Excise Department has granted benefits of MACP to the employees like petitioner herein without taking into account the financial upgradation given on non-functional scale. The departments have earlier maintained that only functional promotions would be counted for the purpose of extending the benefits of ACPs. The employees were all given benefits by taking a position that there was no provision for counting non-functional scale for the purpose of ACPs. Subsequently, on the basis of further clarification the benefits were all withdrawn. This resulted in filing several original applications before the Central Administrative Tribunal. The Central Administrative Tribunal

*Chandigarh Bench rejected the contention taken by the respondent in O.A. No.1038 of 2010. The said decision was upheld by the High Court of Punjab and Haryana. Even thereafter several orders were passed by the respondents. We have considered similar writ petitions. In case the concerned departments took earnest efforts to codify all the circulars issued earlier and to issue a fresh circular explaining the nature and scope of MACPS and as to whether non-functional scale would be counted for the purpose of ACPS, it would be possible to avoid cases like this and future cases that are bound to come. We are therefore of the view that instead of deciding the matter one way or the other it would be in the interest of all the parties to direct the Department of Personnel, Public Grievances and Pensions to look into the issue and to take a decision in the light of MACP Scheme.*

*17 Since the Central Administrative Tribunal has taken a decision notwithstanding the claim made by the petitioner and in view of our decision to direct the Department of Personnel, Public Grievances and Pensions to consider the issue once again, we set aside the order passed by the Central Administrative Tribunal dated 24 February 2014 in O.A.No.675 of 2013 and remit the matter to the Department of Personnel, Public Grievances and Pensions for fresh consideration. The Department of Personnel, Public Grievances and Pensions is directed to consider the issue in extenso in the light of the provisions of MACP Scheme and the benefits given to the employees like the petitioner to count the non-functional scale for the purpose of ACPS. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this writ petition.*

*18 The writ petitioner is disposed of as indicated above. Consequently, the connected MP is closed. No costs.”*

*The above portion of the judgment in R Chandrasekaran (supra) reveals that the Hon’ble High Court of Madras did not give a specific finding as to whether the benefits of financial upgradation in the promotional hierarchy under ACP should be given recognition in the revised pay structure. In other words, there is no specific finding as to the question,*

*“whether benefit of non functional grade pay granted can be set off against the financial upgradation under MACPS?”*

*15.3 We also note that the judgment in S Balakrishnan (supra) is dated 16.10.2014 whereas the judgment in R Chandrasekaran (supra) is dated 08.12.2014. Both the judgments are delivered by a bench comprising of the very same Hon’ble Judges. The Writ Petition in S Balakrishnan is by the Union of India whereas the writ petition by R Chandrasekaran is by an employee. The Madras Bench of this Tribunal allowed the OA filed by Shri S Balakrishnan whereas dismissed the OA filed by Shri R Chandrasekaran. The Hon’ble High Court in S*

*Balakrishnan* by referring to the provisions of MACP, held that the grade pay of Rs.5400/- would not be set off against one financial upgradation, but the very same bench subsequently did not reiterate the same. On the other hand as already pointed out in the above paragraph, the matter was remitted to the Department of Personnel and Training for fresh consideration. The very fact that the Hon'ble High Court remitted the matter to the Department of Personnel and Training in its judgment in *R Chandrasekaran* (*supra*) itself shows that the view taken by them in *S Balakrishnan* (*supra*) may not be correct. This is further evident from the judgment in *R Chandrasekararan* and the relevant portion reads as under:-

*"10 We have dismissed the writ petition filed by the respondents herein and confirmed the order passed by the Central Administrative Tribunal. The circulars and instructions given by the Ministry of Personnel, Public Grievances and Pensions and the earlier circular issued by the Central Board and Excise and Customs dated 20 May 2011, the order dated 21 February 2013 on the file of Central Board of Excise and Customs passed pursuant to the direction in O.A.No.140 of 2012 on the file of Central Administrative Tribunal, Madras Bench were not before us while considering the writ petition in W.P. No.11535 of 2014. It was only in the present writ petition the petition and the respondents have produced the classificatory circulars dated 25 February 2011, 20 May 2011 and the order passed by the Central Board of Customs and Excise dated 21 February 2013.*

*11 We have perused the circulars issued by the concerned authorities and the order dated 21 February 2013 on the file of Central Board of Excise and Customs.*

*12 We agree with the views expressed by the Central Administrative Tribunal in its order dated 24 February 2014 which is impugned in this writ petition to the effect that there were contradictory circulars issued by various departments by interpreting MACP Scheme"*

*The above portion of the judgment in *R Chandrasekaran* (*supra*) goes to show that the view taken in *S Balakrishnan* (*supra*) was neither reiterated nor confirmed/affirmed by the very same High Court.*

*15.4 It is the specific argument of Shri N S Kariel that though in *R Chandrasekaran*, the matter was remanded to the DoPT, the view expressed in *S Balakrishnan* is confirmed by the Hon'ble Supreme Court in view of the fact that the SLP filed against the judgment of Hon'ble High Court of Madras in *S Balakrishnan* came to be dismissed by the Hon'ble Supreme Court by its order dated 31.08.2015 in SLP No.15396/2015 vide Annexure A/7. Now the question is*

*"whether the order of the Hon'ble Supreme Court dated 31.08.2015 against the judgment in *S Balakrishnan* (Annexure A*

7) amounts to affirmation or confirmation or approval of the view expressed by the Honble High Court of Madras?"

At this juncture it would be appropriate for us to refer to the orders of Hon'ble Supreme Court of India in the said SLP 15396/2015 vide Annexure A/7, It reads as under:-

"Upon hearing the counsel the Court made the following

O R D E R

Delay condoned.

The special leave petition is dismissed."

15.5 The question as to what would be the effect of dismissal of a SLP in limine by the Hon'ble Supreme Court had come up for consideration before the Hon'ble Supreme Court several times. A Full Bench of the Hon'ble Supreme court in the case of *Kunhayammed v. State of Kerala* (2000) 6 SCC 359 held as under:

"in any case dismissal would remain a dismissal by a non speaking order where no reasons have been assigned and no law has been declared by the Supreme Court. The dismissal is not of the appeal but the SLP. Even if the merits have been gone into, in our opinion neither view would attract Article 141 of the Constitution to the said order."

15.6 Referring to the above principles laid down in *Kunhayammed (supra)*, the Hon'ble Supreme Court subsequently in the case of *Bhakra Beas Management Board v. Krishan Kumar Vij and Anr.* (2010) 8 SCC 701, held as under:-

"Thus, according to the law laid down by the Bench of three learned Judges of this Court, it is clear that dismissal of a matter by this Court at the threshold, with non-speaking order, would not fall in the category of binding precedent. Meaning thereby that the impugned order of the Division Bench can still be challenged on merits by the appellant Board. Thus, the earlier orders of the High Court and this Court passed in *Raninder Singh Patpatias* case, creates no bar from re-examining the matter on merits."

15.7 The judgment of the Hon'ble Supreme Court in the case of *State of Punjab v. Davinder Pal Singh Bhullar* (2014) 1 SCC (L&S) 208 = (2011) 14 SCC 770 also comes in aid to answer to the above point. At paragraph Nos.112 and 113 in SCC (L&S), it is held:

*The submission advanced on behalf of the respondents that as the Special Leave Petition filed against the impugned judgment by some other party, stood dismissed by this Court, these matters also have to be dismissed at the threshold without entering into merit, is not worth acceptance. The issue as to whether the dismissal of the special leave petition by this Court in limine, i.e., by a non-speaking*

*order would amount to affirmation or confirmation or approval of the order impugned before this Court, has been considered time and again. Thus, the issue is no more res integra.*

113. *A large number of judicial pronouncements made by this Court leave no manner of doubt that the dismissal of the Special Leave Petition in limine does not mean that the reasoning of the judgment of the High Court against which the Special Leave Petition had been filed before this Court stands affirmed or the judgment and order impugned merges with such order of this Court on dismissal of the petition. It simply means that this Court did not consider the case worth examining for a reason, which may be other than merit of the case. An order rejecting the Special Leave Petition at the threshold without detailed reasons, therefore, does not constitute any declaration of law or a binding precedent.”*

15.8 *In view of the principles laid down by the Hon'ble Supreme court in the cases viz. (i) Kunhayammed(supra), Krishan Kumar (supra) and Davinder Pal Singh Bhullar (supra), we are of the opinion that the submission of Shri N S Kariel that the view/findings of the Hon'ble High Court of Madras in S Balakrishnan has attained finality cannot be countenanced. We have already pointed out in R Chandrasekaran (supra), the Hon'ble High Court after referring its earlier judgment in S Balakrishnan (supra) remanded the matter to the DoPT for its fresh consideration. It did not reiterate its views and findings in S Balakrishnan. Therefore, in view of the judgment in R Chandrasekaran and the law declared by the Hon'ble Supreme Court as to the effect of a dismissal of a SLP in limine, it can be well said that there is no categorical finding of the Hon'ble High Court of Madras relating to the issue as to*

*“whether the benefit of non functional grade pay on completion of four years can be set off against one financial upgradation under the MACP or not?”*

*mainly for the reason that there is no reiteration of its earlier judgment in S Balakrishnan (supra). For the reasons stated at para 15.1 to para 15.8, we hold:*

- (i) *That the issue did not attain finality.*
- (ii) *There is no categorical finding as to the issue in question.*
- (iii) *The dismissal of SLP against the judgment in S Balakrishnan (supra) does not result in affirmation/confirmation or approval.*

16 *Whether the judgment of the Hon'ble High Court of Punjab and Haryana in Rajpal (supra) stands stayed?*

16.1 *The entire claim of the applicants in this OA is based on the judgment in S Balakrishnan (supra) and R Chandrasekaran (supra). It is already pointed out that in S Balakrishnan (supra), the judgment of Chandigarh Bench of this Tribunal in O.A.No.1038/2010 (Rajpal v.*

*Union of India) came to be upheld by the Hon'ble High Court of Punjab and Haryana by its judgment dated 19.10.2011 in CWP No. 19387 of 2011 (Union of India v/s Rajpal). We may also add, that the SLP No.7467/2013 preferred against the judgment of Hon'ble High Court of Punjab and Haryana in Rajpal (supra) was dismissed by the Hon'ble Supreme Court by its order dated 15.04.2013. But, not on merits. It is only on the ground of delay and laches in limine.*

*16.2 At this juncture it would also be necessary for us to refer to the fact that an identical matter to that of Rajpal (supra) came up for consideration before the Ernakulam bench of this Tribunal in OA 816/2012 (M.V.Mohan Nair v/s Union of India). By placing reliance on the orders of Chandigarh Bench dated 31.05.2011 in OA 1038/CH/2010, which was affirmed by the Hon'ble Punjab and Haryana High Court dated 19.10.2011, the Ernakulam Bench allowed the OA No.816/2012 of Shri M V Mohanan Nair (supra). As against the order in M V Mohanan Nair, the Union of India approached the Hon'ble High Court of Kerala in OP (CAT) 2000 of 2013. The Hon'ble High Court of Kerala by its judgment dated 24.06.2013 was pleased to dismiss the said OP(CAT) 2000/2013. The Union of India preferred SLP (C) No.21813/2014 (CC No.10791 of 2014) against the judgment of Hon'ble High Court of Kerala in OP (CAT) 2000/2013, and the Hon'ble Supreme Court by its order 08.08.2014 stayed the operation of the orders of Hon'ble High Court of Kerala in M V Mohanan Nair and the same is pending consideration before the Hon'ble Supreme Court. Thus it is clear that the original finding of Chandigarh Bench of this Tribunal in OA 1038/2010 Rajpal Supra which was confirmed by the Hon'ble High Court of Punjab and Haryana and was followed by the Hon'ble High Court of Madras in S Balakrishnan and the Hon'ble High court of Kerala in M V Mohanan Nair is seized of by Hon'ble Supreme court in SLP No.21803/2014 and the same stands stayed.*

*16.3 We would also like to mention about an order of the Bangalore Bench of this Tribunal dated 14.10.2015 in OA 896/2014 in the case of N Pushpa v/s The Director General, C.P.W.D. It would be appropriate to quote the relevant portion of the order in N Pushpa (supra). It reads as:*

*“1. The OA has been filed by the applicant under S19 of the Administrative Tribunals Act, 1985, seeking issuance of direction to the respondents to pass orders granting 2nd financial upgradation under the MACP Scheme in the promotional hierarchy of post with effect from the date the same has become due with all consequential benefits.*

*2 The learned counsel for the applicant has relied upon the judgment of the Punjab & Haryana Court in CWP No.19387/2011 as upheld by the apex Court in SLP (CC No.7467/2013). The applicant has also relied upon the order in OA No.864/2014 dated 12.03.2014 , decided by the CAT, Principal Bench, New Delhi relying upon the judgment in Rajpal Vs. Union of India & Ors. of the Punjab & Haryana High Court in CWP No.19387/2011.*

3. .... .....

4 It has further been pointed out by the learned counsel for the respondents that with regard to the specific case of Rajpal (*supra*), that the judgment of CAT Principal Bench as well as that of Punjab & Haryana High Court was not considered on merits. The said SLP was dismissed due to technical reasons on account of insufficient explanation to condone the delay in re-filing the SLP. It has also been pointed out that the order of CAT, Principal Bench, New Delhi in another OA No.904/2014, in a similarly situated case, has also not attained finality and has also been challenged by the respondents before the Honble High Court of Delhi wherein vide order dated 26.07.2013, it has been held that the decision in Rajpal's case has *prima-facie* proceeded on a wrong presumption.

5 Be that as it may, today the OA was orally heard and reserved for orders. It is now known that the Hon'ble Supreme Court has granted stay in similar matter of grant of MACP on promotional hierarchy SLP Civil (CC) No.10435 of 2014 in Union of India v. Babu Ram & Ors. Arising out of the impugned order dt. 07.11.2013 in CWP No. 24279/2013 passed by the Hon'ble High Court of Punjab & Haryana, Chandigarh. The Hon'ble Supreme Court has condoned the delay, issued notice and stayed the operation of the impugned orders and directed that it may be tagged with SLP No.22181/2014 CC-8271/2014 vide order dt. 22.08.2014.

6 The Hon'ble Supreme Court has also recently granted stay vide order dated 08.08.2014 in CC No.8271/2014 converted to SLP No.21803/14 in the matter of Union of India v. M V Mohanan Nair on the order of CAT, Ernakulam Bench dt. 29.01.2013 in OA 816.2012, which was subsequently upheld by the Hon'ble High Court of Kerala in OP (CAT) No. 2000/2013 regarding grant of MACP benefit in promotional hierarchy. The Hon'ble Supreme Court has tagged the three other SLPs filed by Union of India in SLP No.s 21803/2014 in an identical matter. The three SLPs are (1) 22181/14 filed by Union of India v. Reeta Devi, (2) SLP No. 23333/2014 filed by Union of India v. Babu Ram and Ors. And (3) SLP No. 23335/2014 filed by Union of India v. O.P.Bhadani. Another SLP CC 10436 of 2014 in UOI v. Dhirender Singh and Ors. Is also linked with above SLP 23333 of 2014.

7 From the above, it is clear that subsequent to the judgment in Rajpal's case (*supra*), a number of cases on the same subject have got linked, in which a stay is operating on the basis of the orders off Hon'ble Supreme Court.

8 In view of the above, the outcome in the present OA will be subject to the outcome in the above SLPs.

9 With this observation, the OA is disposed of. No cost."

*The above orders of the Bangalore Bench in N.Pushpa (supra) confirms our view that the issue is subjudice and the judgment in Rajpal (supra) stands stayed.*

17 *Initially when the matter came up for hearing on 23.6.2017 and referring to these facts (except the order in N Pushpa), we have put a specific query to Shri N S Kariel as to whether would it be appropriate for us to entertain the OA since the claim of the applicant is only on the strength of the judgment in S Balakrishnan (supra), Shri N S Kariel submitted that he may be granted some time to examine the same and requested for an adjournment. Accordingly, the matter was adjourned from 23.06.2017 to 07.07.2017.*

18 *On 07.07.2017, Shri N S Kariel vehemently argued that in view of the fact that the judgment in S Balakrishnan (supra) has attained finality and the applicants being similarly situated persons to that of Shri S Balakrishnan (supra) they are entitled for the reliefs sought by them in the OA. To our yet another specific query as to how the claim of the applicants can be entertained in view of the fact that the judgment in Rajpal came to be stayed by the Hon'ble Supreme Court in the said SLP No.21803/2014, he submitted that he is only relying upon the judgment in S Balakrishnan (supra) and R Chandrasekaran (supra) and the orders of the Hon'ble Supreme Court dated 31.08.2015 (Annexure A/7), by which the SLP preferred against the judgment in S Balakrishnan (supra) was dismissed. He submitted that M V Mohanan Nair can have no relevance with regard to the claim of the applicant. We are not in agreement with the submission that Mohanan Nair has no relevance. On the other hand, we hold that Mohanan Nair has direct nexus.*

19 *Conflicting views of different High Courts on the issue in question. The specific contention of Shri N S Kariel is that the non functional grade pay granted to the applicants cannot be set off against the grant of financial upgradation under MACP. To meet this argument, it would be appropriate for us to refer to the findings and views of the Honble High Court of Delhi in this regard. The question as to the validity of the clarification issued by the DoPT under the MACP scheme i.e. as per the provisions of MACPS, every financial upgradation under the scheme has been treated as one upgradation and would be offset against one financial upgradation came up for consideration before the Principal Bench of this Tribunal in OA 3441/2012 in the case of All India CGHS Employees Association & Ors v/s. Union of India and Ors. The Principal Bench of this Tribunal upheld the contention of the All India CGHS Employees Association and held that the financial upgradation granted to the CGHS employees after completion of two years cannot be treated as one financial upgradation under MACP. As against this, the Union of India challenged the order of Principal Bench dated 31.01.2014 in the said OA 3441/2012 in WP (C) No.8515/2014 on the file of the Honble High Court of Delhi at New Delhi. By quoting the relevant provisions of the MACP scheme and on a detailed analysis of the said scheme, the Honble Delhi High court held that once an employee has got the benefit of time bound promotion or in-situ*

*promotion and has got the higher pay scale, the same has to be counted for the purpose of financial upgradation under the scheme. It would be appropriate for us to refer to para-15 of the judgment which reads as under:-*

*“15 Paragraph 13 of the MACP Scheme states that existing time-bound promotions, including in-situ promotion scheme or other kinds of promotion schemes existing for a particular category of employees in the Ministry of Department or its offices could continue to be operational if it was decided by the administrative authority to retain such schemes after consultation. However, the said scheme cannot run concurrently with the MACP Scheme. This stipulation is significant for it postulates that the employees cannot get dual benefit under the MACP Scheme or under the scheme relating to time-bound promotion or in-situ promotion. The reason is also obvious. Paragraphs 1 and 2 of the Scheme postulate grant of three financial upgradations after ten years of service, as per the pay band and grade pay as given in Section I, Part A to the First Schedule. Once an employee has got the benefit of time-bound promotion or in-situ promotion and has got the higher pay scale, the same has to be counted for the purpose of financial upgradation under the MACP Scheme.”*

*The above portion of the judgment of Hon’ble Delhi High Court in All India CGHS Employees Association (supra) in (WP (C) No.8515/2014 dated 9th November, 2016) runs counter to the view of the Honble High Court of Punjab and Haryana and in Rajpal (supra) which is followed by the Hon’ble High Court of Madras in S Balakrishnan.*

20 *Where there exists conflicting views and how to deal with such a dilemma was dealt with by a Full Bench of this Tribunal in OA 555/2001 in (Dr. A K.Dawar v. Union of India and others) on the file of the Principal Bench of this Tribunal. In Dr A D Dawar (supra), the Principal Bench was considering the situation arising out of conflicting decisions of Honble High Courts. It referred to the decisions in M/s East India Commercial Co. Ltd., Calcutta and Another v. Collector of Customs, Calcutta, (AIR 1962 SC 1893), Bhagaban Sarangi (supra) IPCL and Another v. Shramik Sena [(2001) 7 SCC 469] and Director General (I&R) v. Holy Angels Schools, [1998 CTJ 129 (MRTPC)], and it held as under:-*

*“17. Consequently, we hold:-*

- 1. that if there is a judgment of the High Court on the point having territorial jurisdiction over this Tribunal, it would be binding;*
- 2. that if there is no decision of the High Court having territorial jurisdiction on the point involved but there is a decision of the High Court anywhere in India, this Tribunal would be bound by the decision of that High Court;*
- 3. that if there are conflicting decisions of the High Courts including the High Court having the territorial jurisdiction, the decision of the Larger Bench would be binding, and*

4. that if there are conflicting decisions of the High Courts including the one having territorial jurisdiction then following the ratio of the judgment in the case of Indian Petrochemicals Corporation Limited (*supra*), this Tribunal would be free to take its own view to accept the ruling of either of the High Courts rather than expressing third point of view.

21 Thus, in view of the decision of the Full Bench in *A K Dawar* (*supra*), and by following the judgment in Indian Petrochemicals Corporation Limited (*supra*), we are free to take our own view to accept the rulings of either of the Hon'ble High Courts of Delhi or the Hon'ble High Court of Madras. At this juncture, we may observe that as already pointed out that though the Hon'ble High Court of Madras in *R Chandrasekaran* set aside the order of the Tribunal and did not reiterate its findings in *S Balakrishnan*, on the other hand it remanded the matter to DoPT; whereas on going through the judgment of the Hon'ble Delhi High Court in WP (C) No. 8515/2014 one can find that the Hon'ble High Court has extensively analyzed the MACP scheme and categorically held as

*"that once an employee has got the benefit of time bound promotion or in-situ promotion and have got the higher pay scale, the same has to be counted for financial upgradation under the MACP Scheme."*

*The judgment in Rajpal* (*supra*) of the Hon'ble High Court of Punjab and Haryana stands stayed by the Hon'ble Supreme Court. Therefore, in view of the guidelines in the Full Bench of this Tribunal in *A K Dawar* (*supra*), we follow the rulings of Hon'ble High Court of Delhi in WP (C) 8515/2014. However, we would like to mention that this view is pending consideration before the Hon'ble Supreme Court in *M V Mohanan Nair* (*supra*) and other four connected SLPs namely

- (i) SLP No.22181/2014- *Union of India v/s Reeta Devi*
- (ii) SLP No.23333/2014-*Union of India v/s Babu Ram & Ors*
- (iii) SLP No.23335/2014-*Union of India v/s. O.P.Bhadhani*
- (iv) SLP (CC) 10436/2014-*Union of India v/s Dhirender Singh*

22 For the foregoing, we are of the opinion that judicial discipline demands that we shall not entertain the OA mainly for the following reasons:-

- (i) that the point that arises for consideration is pending consideration before the Hon'ble Supreme Court in the said (a) SLP No.21803/2014 in *Union of India v/s M V Mohanan Nair* (*supra*) and other five SLPs mentioned in the above paragraph.
- (ii) that the judgments of the Hon'ble High Court of Punjab and Haryana in which *Rajpal* (*supra*) was upheld are stayed by the Hon'ble Supreme Court;
- (iii) there exists conflicting views of different high courts.
- (iv) We follow the ruling of the Hon'ble Delhi High Court.

23 *Accordingly we decline to entertain the OA since the same would serve no purpose, particularly in view of the fact that the issue is pending consideration before the Hon'ble Supreme Court and the findings in Rajpal (*supra*) stands stayed by the Hon'ble Supreme Court. The OA stands rejected. There shall be no orders as to costs."*

20 *Resultantly, all the OAs are disposed of in terms of the above order dated 28.07.2017 in OA 247/2017 **Bajranglal** (*supra*).*

21 *There shall be no order as to costs.*

4. The Ahmedabad Bench held that since a similar matter had been pending decision of the Hon'ble Apex Court under judicial discipline there may not be any point in interfering in this matter as there exists some conflict in views in different Benches of the Tribunal and other courts.

5. The Ernakulam Bench of the Tribunal also had considered this matter in OA No.123/2017 and other connected cases vide judgment dated 19.06.2018. The Ernakulam Bench was of the view that the grant of Non functional grade pay of Rs.5400/- will be counted as one financial upgradation and therefore the Rs.6600/- will be otiose, which we quote:

*"O R D E R*

*Per: **Hon'ble Mr.U.Sarathchandran, Judicial Member***

*Since a common issue has been involved in these four cases, a common order is being passed. For the sake of convenience, pleadings and the documents annexed to O.A 180/00123/2017 are referred to in this common order which are mutatis mutandis relied on by the parties in other OAs also.*

*2. The applicants joined the service under the respondents as Inspector of Central Excise. Subsequently they were promoted to the grade of Superintendents. They were granted 2nd financial upgradation after completion of 24 years under the Assured Career Progression Scheme (ACP Scheme, for short) whereby they were placed in the pay scale of Assistant Commissioners of Central Excise which is the promotion post. As per the ACP scheme, the financial upgradation is to be given to the Government Servants, who work without being granted promotion, to the pay scale of the next promotional post on completion of 12 years and 24 years. The applicants herein have been granted two financial upgradations and were placed in Group A pay scale of the Assistant Commissioners of Central Excise i.e,*

Rs.8000-275-13500 (pre-revised scale). The 6th Central Pay Commission (6th CPC, for short) introduced Modified Assured Career Progression Scheme (MACP Scheme, for short) granting three financial upgradations at the intervals of 10, 20 and 30 years of continuous regular service, placing the government servant who has not been granted promotion during the above period, to the next higher Grade Pay. The applicants received second financial upgradation under the ACP scheme prior to the implementation of 6th CPC. When the 6th CPC recommendations were brought into effect with effect from 1.1.2006 vide CCS (Revised Pay) Rules, 2008, erstwhile ACP scheme remained effective till 31.8.2008 and from 1.9.2008 MACP Scheme (notified on 19.5.2009) was brought into effect but given retrospective effect from 1.9.2008.

3 The 6th CPC introduced two scales of pay for the Superintendents of Central Excise as per CCS (Revised Pay) Rules, 2008 notified on 29.8.2008 and the 6th CPC recommendations were implemented with effect from 1.9.2008. According to the new CCS (Revised Pay) Rules, 2008, the Superintendents of Central Excise who were having the scale of pay of Rs.7500-12000 were placed in Pay Band [PB] 2 with Grade Pay of Rs.4800/- and after 4 years, they were placed in the revised scale of Rs.8000-13500 in PB-2 with Grade Pay of Rs.5400/-. Accordingly, there were two Grade Pays in PB-2 for the Superintendents of Central Excise.

4 The applicants who had completed 24 years with just one promotion as Superintendents, were granted the Assistant Commissioner's scale of pay as Group 'A' entry in Rs.8000/- (Rs.8000-275-13500) which is equivalent to 6th CPC PB-3 Rs.15600-39100/- with Grade Pay of Rs.5400/- with effect from 15.6.2004 as 2nd financial upgradation under ACP much before the 6th CPC scales were implemented. According to the applicants the scale of pay of Rs.9300-34800 in PB2 with Grade Pay of Rs.5400/- is the non-functional scale (NFSG) for Superintendents who were completed 4 years of service. The various Pay and Accounts Office in different parts of the country has entertained doubt as to the correct Grade Pay of Superintendents who had got their 2nd financial upgradation under the ACP Scheme. As per Annexure A-5 communication issued by the Ministry, the pre-revised scale of Rs.8000-275- 13500 is equivalent to Rs.15600-39100 in PB-3 with Grade Pay of Rs.5400/-. Thereafter, applicants were granted 3rd financial upgradation under the MACP scheme in the scale of Rs.15600-39100 in PB-3 with Grade Pay of Rs.6600/-. Subsequently they were issued with Annexure A-1 letter re-fixing their pay with effect from 1.1.2006 in a mechanical way without application of mind to the facts of the case. Applicants contend that their case is falling within the illustration 'C' given in para 28 of the MACP Scheme, a copy of which is marked as Annexure A-4. They further state that as per Serial No.3 of Annexure A-8 clarification issued by DoP&T also it has been made clear as to how the benefits of ACP be granted if due between 1.1.2006 and 31.8.2008. The applicants state that they were not given an opportunity to exercise option and thereupon on account of the wrong interpretations of the respondents they were issued with the impugned pay fixation statements. They pray for quashing the pay fixation statement issued by the respondents re-calling the 3rd MACP benefits given to them with Grade Pay of Rs.6600/- and to declare that they are entitled to the 3rd financial upgradation under the MACP Scheme with Grade Pay of Rs.6600/-.

5 The respondents contend that the non-functional upgradation granted to the Superintendents (Group B Officers) on completion of 4 years of service would be

*treated as upgradation in terms of para 8.1 of the Annexure A-4 MACP Scheme and the same would be offset against one financial upgradation under the MACP Scheme. They rely on Annexure R-1 issued by the DoP&T on 21.7.2010 in this regard. They reiterate that the DoP&T and the Department of Expenditure of the Ministry of Finance have clarified that the grant of non-functional Grade Pay of Rs.5400 in PB-2 to the Superintendents needs to be counted as one financial upgradation under the MACP Scheme and therefore, the contention of the applicants that upgradation from Grade Pay of Rs.4800/- to Rs.5400/- cannot be treated as upgradation under the MACP Scheme is not correct. According to the respondents the Superintendents who have been granted 3rd financial upgradation under MACP Scheme in the Grade Pay of Rs.6600/- is an administrative error by the field officers and their upgradation wrongly granted needed to be withdrawn and accordingly the Grade Pay of Rs.6600/- wrongly given was withdrawn and decided to recover excess payment made to the individual officers.*

*6 M.A 180/00300/2018 has been filed for accepting rejoinder is allowed and the same is taken on record. In the rejoinder, applicants refuting the above contentions and contending that the placement of the Superintendents of Central Excise in PB-2 with Grade Pay of Rs.5400/- as non-functional scale as they had completed more than 4 years' service as Superintendents as on 1.1.2006 does not take away the 2nd financial upgradation to PB-3 with Grade Pay of Rs.5400/- and they are entitled to the 3rd financial upgradation when they completed 30 years of service with Grade Pay of Rs.6600/-.*

*7 The controversy in these cases is whether the grant of 3rd MACP on completion of 30 years of service placing the Superintendents in Central Excise at the Grade Pay of Rs.6600/- is correct or not.*

*8 We have heard the counsel appearing for the applicants and also the learned Central Government counsel concerned in each of the cases. Perused the records.*

*9 It is not in dispute that after the 2nd financial upgradation under the ACP scheme, the applicants in these cases were placed in the pre-revised scale of pay of Rs.8000-275-13500 which is corresponding to Rs.15600/- - 39100 with Grade Pay of Rs.5400/-.*

*10 It is also undisputed that the Superintendents of Customs and Central Excise are having two Grade Pays in PB -2 ie. one with Grade Pay of Rs.4800/- and another with Grade Pay of Rs.5400/-. Those officials become entitled to Pay Band 2 with Grade Pay of Rs.5400/- only after they complete 4 years of service as Superintendents in the Grade Pay of Rs.4800/-.*

*11 MACP Scheme has brought systemic changes to the then existed ACP Scheme. Both the Schemes were to alleviate the drudgery of lack of promotional avenues of the government servants for a long time. Under the ACP Scheme, financial upgradation in the promotional scale were given on completion of 12 years and 24 years respectively without promotion whereas in the MACP scheme three financial upgradations counting from a direct entry grade on completion of 10, 20 and 30 years respectively whenever a person has spent 10 years continuously in the same Grade Pay. The MACP Scheme envisages merely placement in the immediate next higher Grade Pay in the hierarchy of recommended revised Pay Bands under the*

*CCS (Revised Pay) Rules, 2008. It is also to be noted that the Grade Pay at the time of financial upgradation under the MACP Scheme can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion and in such cases the higher Grade Pay attached to the next promotion post in the hierarchy of the concerned cadre will be given only at the time of regular promotion. It is further to be noted that the Grade Pay of Rs.5400/- is now in two Pay Bands viz; PB2 and PB3. Para 8.1 of the MACP Scheme states:*

*“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 PB-2 and Rs.5400 in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under MACP Scheme. ”*

*12 Grade Pay of Rs.5400/- is given to Superintendents of Central Excise, on completion of their 4 years' service in PB-2 with Grade Pay of Rs.4800/-. Applicants in these cases were granted ACP benefits in the Assistant Commissioner's scale in Group 'A' (Rs.8000-275-13500) [ equivalent to the 6 th CPC Pay Band 3 Rs.15600-39100 with Grade Pay of Rs.5400/-] which was done before the 6th CPC was implemented through CCS (Revised Pay) Rules, 2008.*

*13 The respondents contend that the placement of the applicants in the Grade Pay of Rs.5400/- in Pay Band 3 has to be treated as a separate Grade Pay for the purpose of grant of upgradation under the MACP Scheme.*

*14 It appears that a good number of litigations have arisen. In O.A Nos.821 of 2010 and connected cases, the co-ordinate Bench of this Tribunal at Madras vide order dated 9.3.2011 held that the Superintendents of Central Excise are entitled to have the pay scale in Pay Band 3 i.e, Rs.15600-39100 with Grade Pay of Rs.5400/- as replacement pay scale to the pre-revised Rs.8000-275-13500 which was granted to them as financial upgradation under ACP Scheme i.e, the scale of pay of the post in the promotional hierarchy. The department thereafter decided to grant such officials who received financial upgradation in the scale of pay of Rs.8000-275-13500/- as financial upgradation be granted pay scale in Pay Band 3 Rs.15600-39100 with Grade Pay of Rs.5400/- as per the 6th CPC replacement scale. When the aforesaid decision of the Madras Bench of this Tribunal was taken up before the High Court of Madras, the High court directed the department to issue a fresh circular codifying all the circulars issued earlier and as to whether nonfunctional scale would be counted or not against future upgradation under the MACP scheme.*

*15 In their reply statement the respondents in O.A 180/00123/17 have given a detailed history of different litigations ensued and the different clarifications issued by the department culminating in the decision that the financial upgradation granted after 4 years of service as Superintendents of Central Excise would count as a financial upgradation under MACP Scheme and therefore, such persons would not be entitled to 3rd financial upgradation under the MACP to the Grade Pay of Rs.6600/-.*

16 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.

17 The applicants rely on illustration 'C' at para 28 of the MACP Scheme. Para 28 reads:

*"C. If a Government servant has been granted either two regular promotions or 2nd financial upgradation under the ACP Scheme of August, 1999 after completion of 24 years of regular service then only 3rd financial upgradation would be admissible to him under the MACPS on completion of 30 years of service provided that he has not earned third promotion in the hierarchy."*

18 Applicants further rely on the FAQ and clarifications issued by the DoP&T on 9.9.2010 wherein it is stated: -

<b>Sl.No.</b>	<b>Point of Doubt</b>	<b>Clarification</b>
3	How will the benefits of ACP be granted if due between 01.01.2006 and 31.08.2008 ?	<p>The new MACPS has come into existence w.e.f 1.9.2008. However, the pay structure has been changed w.e.f 1.1.2006. Therefore, the previous ACPS would be applicable in the new pay structure adopted w.e.f 1.1.2006. Para 6.1 of Annexure -1 of MACPS is only for exercising option for coming over to the revised pay structure and not for grant of benefits under MACPS. The following illustrations would explain the position.</p> <p>(A) In the case of isolated post:</p> <p>Date of appointment in entry Grade in the pre-revised pay scale of Rs.4000-6000: 01.10.1982</p> <p>1<sup>st</sup> ACP granted on 9/8/1999 :Rs.4500-7000 (pre-revised)</p> <p>2<sup>nd</sup> ACP due on 1.10.2006 :Rs.5000-8000 (pre-revised)</p> <p>(revised PB-2 Grade Pay of Rs.4200)</p> <p>3<sup>rd</sup> financial upgradation under the MACPS would be due on 1.10.2012 (on completion of 30 years of continuous regular service) in the immediate next higher grade pay in the hierarchy of recommended revised pay band and grade pay i.e. Grade Pay of Rs.4600 in PB-2.</p>

	<p><b><u>(B) In the case of normal promotional hierarchy</u></b></p> <p><i>Date of appointment in entry grade in the pre-revised pay scale of Rs.5500-9000: 01.10.1982</i></p> <p><i>1<sup>st</sup> ACP granted on 9.8.1999: Rs.6500-10500 (pre-revised)</i></p> <p><i>2<sup>nd</sup> ACP due on 1.10.2006 (as per the existing hierarchy): Rs.10000-15200 (pre-revised)</i></p> <p><i>Therefore, 2<sup>nd</sup> ACP would be in PB-3 with Grade Pay of Rs.6600 (in terms of hierarchy available)</i></p> <p><i>3<sup>rd</sup> financial upgradation under MACPS would be due on 1.10.2012 in the immediate next higher grade pay in the hierarchy of recommended revised pay band and grade pay of Rs.7600.</i></p>
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19 However, the crux of the issue involved in these cases is not as to how the ACP benefits granted between 1.1.2006 and 31.8.2008, but the question is whether the Superintendents of Central Excise who have been placed in the promotional scale which corresponds to Rs.15600-39100 with Grade Pay of Rs.5400/- in PB-3 by way of 2nd financial upgradation under the ACP Scheme can claim the 3rd MACP benefits of further placement in the Pay Band-3 with Grade Pay of Rs.6600/- on completion of their 30 years of service from the direct entry grade ? A clear answer is given in para 8.1 of the MACP scheme as quoted above which in unambiguous terms state that Grade Pay of Rs.5400/- in Pay Band 2 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. When the Superintendents of Central Excise were initially appointed they were placed in the pre-revised scale of Rs.7500-12000 [in the corresponding revised Pay Band with Grade Pay of Rs.4800/-]. In the 6th CPC revised pay structure after completion of 4 years of service in that Pay Band and Grade Pay they get a higher Grade Pay of Rs.5400/- within 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, when they are placed in Grade Pay of Rs.6600/- on completion of 30 years, in fact, they have had already undergone 3 financial upgradations. Hence they cannot be considered for the 3rd financial upgradation as it would be contrary to the MACP Scheme.

20 We are of the view that the clarifications issued by the DoP&T in Annexure R-4 (O.A 180/00404/17) on 2.5.2016 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 is correct in terms of para 8.1 of 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.*

*21 In the light of the above discussion, we hold that there is no merit in the above applications. Hence, the afore-captioned Original Applications are dismissed. MAs are closed. Parties shall suffer their own costs. ”*

6. But when the matter was taken up again in another case in Ernakulam Bench, the Bench refused to follow the earlier judgment in the light of new matters which had come to light and passed an order in OA No.68/2015 dated 15.11.2018, which we quote:

*ORDER*

**Hon'ble Mr. Ashish Kalia, Judicial Member –**

*The relief claimed by the applicant are as under:*

- “i. To declare that the applicant is entitled to a grade pay of Rs. 6,600/- in PB3 w.e.f. 1.9.2008 as 3rd financial upgradation under MACP scheme.*
- ii. to direct the 4th respondent to grant Rs. 6600/- as grade pay as 3rd financial upgradation under MACP scheme w.e.f. 1.9.2008.*
- iii. To direct the 4th and 5th respondent to grant arrears of pay and allowances w.e.f. 1.9.2008.*
- iv. To direct the 4th and 5th respondent to revise the pension and other retirement benefits of the applicant and pay the arrears of leave encashment amount with in a stipulated period.*
- v. To direct the respondents to pay 12% interest p.a. on the entire arrears.*
- vi. To grant such other relief or reliefs which this Hon'ble Tribunal may deem fit and necessary in the circumstances of the case.*
- vi. To grant cost of this OA.”*

2. *The brief facts of the case are that the applicant joined service as a Stenographer in Ahmadabad Central Excise Commissionerate during 1974. He was promoted as Inspector of Central Excise and then as Superintendent of Central Excise. On implementation of Revised Pay Rules, 2008 the applicant was given a Grade Pay of Rs. 5,400/- in PB-2 as per clause (x)(e) of Government's Resolution dated 29.8.2008 as he had completed more than 8 years of service in the cadre of Superintendent Group-B. The 4th respondent issued an order on 28.9.2012 granting the 3rd financial upgradation under MACP scheme in the Grade Pay of Rs. 5,400/- in PB-3 i.e. 15,600-39,100/- plus GP Rs. 5,400/- On introduction of MACP scheme w.e.f. 1.9.2008 the applicant is entitled for a Grade Pay of Rs. 6,600/- as he had completed more than 34 years of service during which period he got only two promotions. He has submitted a representation for the grant of 3rd financial upgradation under MACP scheme but no action was*

*taken. The Madras Bench of the Tribunal in directed the respondents to grant Grade Pay of Rs. 6,600/- to similarly situated officers which was upheld by the High Court of Madras by dismissing the Writ Petition filed by the respondents. The respondents implemented the order passed by the Tribunal. Further the Full Bench of the Tribunal at Bombay in OA No. 518 of 2005 had considered an identical issue. Therefore, the applicant being similarly situated is entitled for the Grade Pay of Rs. 6,600/-.*

3. *Notices were issued to the respondents. They entered appearance through Shri Thomas Mathew Nellimoottil, Sr. PCGC who contended that applicant has completed more than 30 years of service as on 1.9.2008 and he had got three financial upgradations. The applicant joined the service in the grade of Stenographer (Ordinary grade), of which the present Grade Pay of the post is Rs.2,400/- in PB-1. He was later promoted to the grade of Inspector in the Grade Pay of Rs. 4,600/- in PB-2 and further as Superintendent in 1998 in Grade Pay of Rs. 4,800/- in PB-2. Applicant was granted non functional upgradation from 1.1.2006 in Grade Pay of Rs. 5,400/- in PB-2. Thus the applicant has been granted three financial upgradations as per DoP&T OM dated 19.5.2009. The contention of the applicant that he got only 2 promotions i.e. first as Inspector and then as Superintendent is correct. However, he got three financial upgradations first in the GP of Rs. 4,600/-, second in the GP of Rs. 4,800/- and third in the GP of Rs. 5,400/- (non-functional upgradation in PB-2). The DoP&T as per its note dated 21.7.2010 (Annexure R1) clarified that non-functional upgradation will set off against one MACP. Therefore, the maximum financial upgradation admissible under MACP scheme has been given to the applicant. In a similar case in OA No. 1 of 2013 filed before the Ahmedabad Bench of the Tribunal the Tribunal dismissed the OA as per order dated 20.9.2013. Further the CBEC as per letter dated 29.9.2009 clarified that Grade Pay of Rs. 5,400/- in PB-2 and PB-3 is to be treated as separate Grade Pay.*

4. *As regards the decision cited by the applicant of Madras Bench of the Tribunal it is submitted that the same is not applicable to the case of the applicant as there the applicants have joined in the Grade Pay of Rs. 4,600/- as Assistant Enforcement Officers in Directorate of Enforcement whereas the applicant has joined in the grade of Stenographer (Ordinary Grade) in the Grade Pay of Rs. 2,400/- in PB-1 in Central Excise & Customs. Further the OM dated 12.4.2010 relied on by the applicant is specifically applicable to the DR Assistants/DR Grade C Stenographer officers of CSS service only. This fact has not been disclosed by the applicant. Respondents pray for dismissing the OA.*

5. *Heard Shri C.S.G. Nair learned counsel appearing for the applicant and Mr. Thomas Mathew Nellimoottil, Sr. PCGC learned counsel appearing for the respondents. Perused the records. We have also gone through the argument note filed by the applicant.*

6. *The Principal Bench of the Tribunal in OA No. 1707 of 2016 had passed the following order on 11th April, 2016:*

*"The applicants, working as Superintendents in the respondent Central Board of Excise & Customs, filed the instant OA seeking the following reliefs :-*

*“(i) To direct the respondents to grant Grade Pay of 5400 (PB-2) to applicants on completion of 04 years of regular service in the grade pay of 4800 as per Judgment dated 06.09.2010 of Hon’ble High Court of Madras & Judgment dated 09.07.2012 of the High Court of Kerala, Ernakulam Bench with all consequential benefits including arrears of pay.*

*(ii) To quash and set aside the clarification dated 11.02.2009 and direct the respondents to grant grade pay of Rs.5400 in the pay scale of Rs.9300-34800 (PB-2) to the applicants from the date of completion of 4 years of service in the grade pay of Rs.4800 in PB2.*

*(iii) To allow the OA with cost.*

*(iv) Pass any further orders as this Hon’ble Tribunal may deemed fit and proper in the facts and circumstances of the case.”*

2. *When the matter was taken up for hearing, both the counsels submit that in the identical circumstances, the OA No.060/01044/2014 with OA No.060/00018/2015 dated 04.11.2015 (Annexure-A/16) filed in Munish Kumar & Ors. Vs. Union of India and Ors. was allowed and the Writ Petition filed against the said orders before the Hon’ble High Court of Punjab and Haryana was also dismissed on 11.12.2017 in WP(C) No.3430 and 3932 of 2017, wherein it was categorically mentioned that the decision of the Tribunal was based on the judgment of Hon’ble High Court of Madras in WP(C) No.13225/2010 in M. Subramaniam Vs. Union of India & others, which was upheld by the Hon’ble Apex Court in Civil Appeal No.8883/2011 dated 10.10.2017.*

3. *In the circumstances and in view of the admitted position with regard to the claim of the applicants, the instant OA is also allowed in terms of the above referred decisions. The respondents shall complete the exercise within three months from the date of receipt of a certified copy of this order.*

4. *Pending MAs if any be disposed of”*

7. *The applicants have also relied on a similar judgment passed by the High Court of Delhi on 20.12.2017 in WP(C) No. 9357 of 2016 wherein the Hon’ble High Court has held as under:*

*“18. In the present case, it is noticed that the petitioners’ counterparts were granted the third financial upgradation, although they, like them were given the GP of ₹5400/-; they perform similar, if not identical functions. FC Jain (supra) is an authority that if such broadly identical functions are involved, both categories ought to be treated alike in regard to interpretation of pay norms, by the organization. Therefore, the principle of parity would result in acceptance of the petitioner’s claim. The second aspect which this court would emphasize is that unlike “stagnation” or performance based increments, or placement in higher scales, the grant of ₹5400/- is automatic, after the happening of a certain event, i.e. completion of four years’ service. This is quite different from promotion or placement in the selection grade, which is*

*performance dependent or based on the availability of a few slots or vacancies (usually confined to a portion of the entire cadre: say 20%). The last reason is that both V.K. Sharma (supra) and Suresh Chand Garg (supra), in somewhat similar circumstances, accepted that the grant of a higher grade pay did not preclude the grant of the third financial upgradation.*

*19. In view of the foregoing analysis, the court is of opinion that the petition has to succeed. As a consequence, the respondents are directed to revise and fix the pay scales by granting the third financial upgradation, to the petitioners. They shall be entitled to consequential arrears and all consequential benefits; the payments shall carry interest @ 9 per cent per annum. The payouts shall be made to the petitioners within 8 weeks. The petition is allowed, in these terms.*

*We find that the above order passed by the Principal Bench of the Tribunal as well as the judgment passed by the Hon'ble High Court of Delhi squarely applies to the present case as well. Therefore, nothing remains to be decided in the present case.*

8. *Accordingly, the Original Application is allowed. The applicant is entitled to a Grade Pay of Rs.6,600/- in PB-3 w.e.f. 1.9.2008 notionally as the 3rd financial upgradation. However, the monetary benefits of arrears will be restricted to three years prior to the date of filing of this OA as laid down by the apex court in Union of India & Ors. v. Tarsem Singh – (2008) 8 SCC 648. The respondents shall implement the order within three months from the date of receipt of a copy of this order. Parties are directed to bear their own costs.”*

**7. Therefore, the question is whether this grant of Non functional grade was equivalent to a financial upgradation which is an anti stagnation modus operandi as elucidated by the Supreme Court. We had requested the learned counsel to advance their arguments on this matter. After hearing them, we are of the view that this is not so. It was just an automatic progression provided in the rules itself and not intended as an anti stagnation proviso provided according to the Hon'ble Supreme Court rulings. Therefore, we are in agreement with the views expressed by the Ernakulam Bench in the later case.**

8. Apparently, this matter was being agitated in the Hon'ble High Court of Delhi in Writ Petition (C) No.9357/2016 dated 20.12.2017, which we quote.

1. Complaining of unjustified denial of third financial upgradation under the Modified Assured Career Progression Scheme (hereafter called "MACPS", for convenience), the writ petitioners approach this Court under Article 226 of the Constitution for appropriate directions.
2. Both the petitioners joined the establishment of the High Court initially in the cadre of Upper Division Clerk [UDC] (the first petitioner on 05.09.1998 and the second petitioner on 22.10.1984) from which they were promoted to the cadre of UDC (again on 05.09.1998 and 13.05.1999 respectively) and finally to the cadre of Reader (first petitioner on 09.10.2007 and second petitioner on 18.07.2008). The action impugned is the denial of their claim for a third financial upgradation. The petitioners challenge an order of the Screening Committee of the High Court which rejected their claim for third financial upgradation. In terms of the MACPS, an employee is entitled to assured career progression at 10 years' intervals – thus, the first financial up-gradation is after 10 years of service; the second after 20 years of service and the third, on completion of 30 years of service.
3. The MACPS had its precursor in Assured Career Progression Scheme (ACP), formulated by the Central Government and brought into force with effect from 09.08.1999. The ACP guaranteed career progression after completion of 12 years of service. The precondition for the applicability of ACP and MACPS is that the concerned officer or employee should not have been promoted. As corollary, in the event of promotion, the concerned career progression benefit at the appropriate stage was to be denied. For instance, if an individual is promoted before the completion of 10 years, she or he cannot avail the ACP/MACPS benefit upon completion of 10 years and would instead have to wait for the completion of 20 years for the second upgradation, provided she/he is not promoted a second time in the career. Initially, upon the publication of the ACP, several queries were urged and doubts sought to be allowed, through an Office Memorandum containing clarifications to *Frequently Asked Questions*. The first of these – applicable to the ACP was published on 01.02.2000. The second was made applicable after the MACPS was brought into force, i.e. 01.09.2008 (through the OM dated 19.05.2009).
4. A related development relevant to the facts of this case is that the Fifth Central Pay Commission [hereafter "the Fifth CPC"] introduced, for the first time, the concept of "Grade Pay" applicable to each of the Central pay or pay band. This principle applied to the recommendations of the Sixth Central Pay Commission [hereafter "the Sixth CPC"] which were

implemented by the Central Government through the rules formulated in 2008. From time to time, various departments in the Central Government; other establishments such as the Delhi High Court, which follows the pattern of pay applicable to Central Government employees and the applicable rules were based upon felt needs, and having regard to the exigencies or peculiarities of the departments and their functioning recommended the “upgradation” of pay to certain classes or categories of officers.” These upgradations could be performance based or purely based upon fulfillment of certain conditions.

5. The petitioners’ claim is that upon completion of 30 years of service given that they were promoted only twice in their careers, the third upgradation assured to them under the MACPS had to be granted. In support of their contention, they argued that they had fulfilled conditions for the application of the relevant conditions under the MACPS:

*... “6.1 In the case of ACP upgradations granted between 01.01.2006 and 31.08.2008, the Government servant has the option under the CCS (RP) Rules, 2008 to have his pay fixed in the revised pay structure either (a) w.e.f. 01.01.2006 with reference to his pre-revised scale as on 01.01.2006; or (b) w.e.f. the date of his financial upgradation under ACP with reference to the pre-revised scale granted under ACP. In case of option (b), he shall be entitled to draw his arrears of pay only from the date of his option i.e. the date of financial upgradation under ACP.*

*6.2 In cases where financial upgradation had been granted to Government servants in the next higher scale in the hierarchy of their cadre as per the provisions of the ACP Scheme of August, 1999, but whereas as a result of the implementation of Sixth CPC's recommendations, the next higher post in the hierarchy of the cadre has been upgraded by granting a higher grade pay, the pay of such employees in the revised pay structure will be fixed with reference to the higher grade pay granted to the post. To illustrate, in the case of Jr. Engineer in CPWD, who was granted 1stACP in his hierarchy to the grade of Asstt. Engineer in the pre-revised scale of Rs.6500-10500 corresponding to the revised grade pay of Rs.4200 in the pay band PB-2, he will now be granted grade pay of Rs4600 in the pay band PB-2 consequent upon upgradation of the post of Asstt. Enggs. in CPWD by granting them the grade pay of Rs.4600 in PB-2 as a result of Sixth CPC's recommendation. However, from the date of implementation of the MACPS, all the financial upgradations under the Scheme should be done strictly in accordance with the hierarchy of grade pays in pay bands as notified vide CCS (Revised Pay) Rules, 2008.*

XXX

XXX

XXX

*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 PB-2 and Rs.5400 in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under MACP Scheme."*

6. The petitioners' request was considered by a Screening Committee, which after deliberations rejected it on 28.01.2016. The Screening Committee reasoned as follows:

*"13. The MACP Scheme in para 28 makes things amply clear that the placement is required to be made in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section 1, para A of the 1st Schedule of the CCS(revised pay) Rules, 2008. Thus, it may be a case that when a person gets the benefit of MACP Scheme, he is placed in the next grade pay as given in the Schedule which may be lower as compared to the person getting regular promotion in which eventuality he may get a higher grade pay. The illustrations read as under:-*

*"28. Illustrations:*

*B. If a Government servant (LDC) in PB-I in the grade pay of Rs.1900 is granted 1st financial upgradation under the MACPS on completion of 10 years of service in the PB-I in the Grade Pay of Rs.2000 and 5 years later he gets 1st regular promotion (UDC) in PB-I in the grade Pay of Rs.2400, the 2nd financial upgradation under MACPS (in the next Grade Pay w.r.t. Grade Pay held by Government servant) will be granted on completion of 20 years of service in PB-I in the grade Pay of Rs.2800. On completion of 30 years of service, he will get 3rd ACP in the Grade Pay of Rs. 4200. However, if two promotions are earned before completion of 20 years, only 3rd financial upgradation would be admissible on completion of 10 years of service in Grade Pay from the date of 2nd promotion or at 30th year of service, whichever is earlier."*

*14. Illustration under Para 28(B) makes it clear that for a person working under Grade Pay of Rs.1900, the first MACP on completion of 10 years is in the grade pay of Rs.2000 which is not a grade pay if a person gets promotion in the hierarchy which is, Grade Pay of Rs.2400 granted on 1st promotion. Meaning thereby, a person completing 10 years gets a grade pay of Rs.2000 which is mentioned in Section 1, Part-A of the first*

*schedule of the CCS (Revised Pay) Rules, 2008, whereas if the same person gets promotion before 10 years, he gets a grade pay of Rs. 2400 which is the grade pay given on promotion from the grade pay of Rs. 1900.*

*15. Going a step further, the frequently asked questions on the Modified Assured Career Progression Scheme in its para 16 make things clearer, where the question is the same which reads as under:*

*“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.”*

*16. The answer is a categorical “Yes”, in terms of para 8.1 of Annexure I of MACPS dated 19.05.2009”. If we have a look at para 8.1 of Annexure I, it is clarified as under:*

*“Consequent upon the implementation of Six 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 PB-2 and Rs. 5400 in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under MACP Scheme.”*

*17. If we look at the statement showing pay scales in the Delhi High Court w.e.f. 1.1.2006 also, the categories of SJA, SJT, Sr. Asst. Librarian, Reader, SPA and Court Officer have kept in Group-B, PB-2 Rs.9300-34,800 plus grade pay of Rs.4800 which changes to PB-3 in the scale of Rs.15,600-39100 plus grade pay of Rs.5400 on completion of 4 years. This change of Pay Band-3 on completion of four years” service was conveyed vide letter No.F.6/24/08-Judl. Suptd law/1264 dated 19.11.2013.*

*XXX XXXX*

*21. The applicants herein referred to the report of the Screening Committee of Delhi District Courts apart from some judgments stated to be on the issue. The Screening Committee report has discussed the provisions of the ACP Scheme which clearly states that financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre. The basic difference between the ACP and the MACP scheme is that the ACP Scheme provided for next higher grade in accordance with the existing hierarchy in a cadre/category of posts whereas MACPS envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section I, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. The said Schedule of MACPS provides for next*

*higher grade pay from Rs. 4800 as Rs. 5400 and not Rs. 6600. Further, it may also be pointed out that the ACPS provided for two financial upgradations on completion of 12 years and 24 years of regular service whereas the MACPS provides for three financial upgradations on completion of 10, 20 and 30 years. The judgments discussed in the Screening Committee Report of District Courts as referred to by the applicants belong to the period when the MACP Scheme was not introduced as the new Scheme only in the year 2009 and the Report came immediately soon thereafter i.e. on 21.9.2010. The judgments referred to by the applicants relating to CAT and Hon"ble Punjab and Haryana High Court are not on the issue of nonfunctional scale of Rs. 5400 but on lower scales. Moreover, the judgements relied upon by the applicants are in personem and not in rem. These do not lay down any guidelines for all the cases of similarly placed persons nor has the DOPT come out with any OM on the issue enveloping all similarly placed persons in the Government of India. Rather, DOPT has come out with a clarification in the form of FAQs which is available on the website of the DOPT that the non-functional grade pay is to be treated as upgradation. Thus, the argument of the applicants that MACP is to be granted on promotional hierarchy and not on next higher Grade Pay does not hold good.*

*22. If we analyze the four cases placed before us for grant of III MACP, we find that all of them have got two promotions and one upgradation on different dates, viz. Mr. Yugesh Mohan was appointed as LDC on 03.05.1984, he got promotion as UDC on 01.04.1994 notionally and on 05.09.1998 on actual basis. Second promotion was in the shape of SJA on 13.07.2004 and on 13.07.2008 he was given third upgradation in the Grade Pay of Rs. 5400/. Mr. Hari Ram was appointed as 02.09.1981 as temporary LDC, on 01.04.1994 became UDC notionally and on 05.09.1998 actually, got his second promotion on 09.10.2007 and third upgradation on 09.10.2011. Likewise, Mr. Mahesh Kumar also was appointed on 12.03.1984 as LDC, got first promotion as UDC on 01.04.1994 on notional basis and on 05.09.1998 on actual basis. He got second promotion on 24.11.2006 and third upgradation in the grade pay of Rs. 5400 on 18.08.2004 on completion of penalty imposed vide this court's order dated 04.09.2012. Mr. C.P. Vig got his appointment on 22.10.1984 as LDC, on 13.5.1999 as UDC, as SJA on 18.07.2008 and in the end, got third upgradation on 18.07.2012. "*

7. Ms. Jyoti Singh, learned senior counsel for the petitioners, argued that the denial of the third financial upgradation/MACP in the circumstances is not justified. She urges that employees of the District Courts were granted

the MACPS benefit disregarding the non-functional scale of '8000-13500 in the Grade Pay of '5400/- which the petitioners now have been denied, thus resulting in discrimination.

8. Learned senior counsel highlights that the MACPS never visualized that the post could have two grade pays as in this case and that the entry of an employee into the second higher grade pay should be treated as an upgradation. It was emphasized that the grant of nonfunctional pay scale i.e. a higher grade pay of '5400/- is not dependent upon fulfillment of any condition by the officer; nor is there – like in the case of selection grade, a stipulation as to the number of posts that can be granted such higher grade pay. Plainly, every Reader, upon completion of four years' service automatically becomes entitled to '5400/- Grade Pay. Thus, this is an integral part of the pay structure rather than as an upgradation as was concluded by the Screening Committee, resulting in denial of the benefit.

9. Learned counsel highlighted that the higher Grade Pay of '5400/- was in fact recommended as part of the post of Section Officer/Private Secretary by the Sixth CPC and was accepted as part of the pay in the Central Civil Services (Revised Pay) Rules, 2008 [hereafter called "the Pay Rules"]. The said Grade Pay has not been ordinarily granted in other posts because of stagnation. Thus, the four year stipulation is not or never was considered a stagnation period, entitling the incumbents to the higher grade pay.

10. Learned senior counsel relied upon the judgment of the Division Bench of this Court in UOI v. FC Jain [W.P.(C) 4664/2001, decided on 18.04.2002] which had indicated broadly how a beneficial scheme such as the ACP ought to be construed and stated further that the fitment into a higher scale of pay ipso facto did not amount to promotion orders to result into a deprivation of ACP benefit. A similar approach was indicted by the Division Bench judgment of the Madras High Court in UOI v. S. Balakrishnan [W.P.(C) 11535/2014, decided on 16.10.2014]. The Court had then observed that:

*"16. Since the MACP Scheme was framed in the larger interest of employees, Court should give a liberal construction. The primary attempt in such cases should be to achieve the purpose and object of the policy and not to frustrate it.*

*17. The Grade Pay in this case was initially granted on non-functional basis. The Grade Pay of Rs. 5400/- in PB-2 being non-functional scale, the same cannot be a functional Grade to Assistant Director-II, who got promotion from the post of Enforcement Officer."*

11. Mr. Sanjay Ghose, learned counsel for the Delhi High Court submitted that the claim in these proceedings is not merited. He argued that the decision whether to grant or not deny the pay benefit is a matter of executive policy based upon an interpretation given by the concerned

agency or department. In the present case, the Screening Committee, which considered the petitioners' representations, rendered its conclusions by an elaborate and reasoned order. There is no flaw in the reasoning or conclusions calling for interference under Article 226 of the Constitution.

12. It is urged besides that the petitioners' claim is based upon a narrow reading of the MACPS and the clarifications made applicable to it. The benefit of a higher Grade Pay ("GP" hereafter) of '5400/- which they enjoyed after completion of four years service in the existing lower grade was in fact an upgradation which coincided wholly with the concept of MACPS. Elaborating further, it was submitted that the MACPS did not envision a third financial upgradation to the next promotional scale, but rather to the next higher grade (in the next higher grade to that of the Reader), with the same pay scale. The basic pay scale of the Reader – to which the petitioners were promoted, is in the scale of pay of '9300-34800 with 4800/- as GP. The succeeding higher grade is the same pay band or scale but with a higher GP of '5400/. But for the four year automatic upgradation, the benefit, in the normal circumstances, to which the petitioners would be entitled, (as the third financial upgradation benefit under the MACPS) is a 3% increase of their existing pay scale. That would have meant a higher GP of '5400/. Having thus received that benefit six years in advance, their claim was not justified and was correctly rejected.

13. Learned counsel relied upon the decision of a Division Bench of this Court in Swaran Pal Singh and Ors. v. UOI and Ors. 2015 (3) AD Del 432 where it was stated that in similar circumstances, the grant of the demand for a higher Grade Pay as a third benefit under the MACPS was rejected. Learned counsel also relied upon a clarification issued by the Central Government on 20.06.2016 regarding the counting of nonfunctional Grade Pay of '5400/. That was in respect of a query made to the Ministry of Finance, Central Board of Excise and Customs. The clarification was as follows:

*"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 nonfunctional grade pay of Rs.5400 in PB-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 provision in Para 8.1 of Annexure-1 of OM No.35034/3/2008-Estt. (D) dated 19th May, 2009 read with FAQ No.16 (copy enclosed) which indicate that the Non-functional scale in 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. Chandrasekaran* may be agitated/defended as per the MACP Scheme vide DoP&T O.M. dated 19.5.2009.

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."

Sh. Ghose, learned counsel, relied upon the following query and clarification applicable to the MACPS.

"16.	<i>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.</i>	<i>Yes, in terms of para 8.1 of Annexure-I of MACPS dated 19.05.2009.</i>
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#### Analysis and Conclusions

14. The factual account which led to the dispute in this case shows that the petitioners complain firstly of discrimination, because their counterparts in the District Courts, due to the administrative decision of the District Judge, have been granted the relief. It is secondly urged that the grant of '5400/- GP is an integral part of their pay scale and cannot be construed as placement in a higher scale, as to preclude their claim for the grant of third financial upgradation. The respondents rely on Para 16 of the clarification issued by the Central Government in its FAQ through a memorandum, to justify their position in declining the relief they claim.

15. In *Swarn Pal Singh* (supra) this court had examined a somewhat similar claim for grant of financial upgradation under the MACP, in the background of an employee's previous placement in a higher GP; it had relied on two previous decisions, and declined relief. The court had reasoned as follows:

*"18. The grievance of the petitioners rests on the premise that their counterparts who have got the benefit under the ACP Scheme have been placed in the pay scales of the next higher posts on completion of 12 and 24 years service. Whereas the petitioners by implementation of MACPS, have been granted second financial upgradation confined only to Grade Pay. Resultantly, the petitioners would be getting lesser pay than those whose pay is fixed with reference to the pay scales granted to them under the ACP Scheme.*

*19. The grievance of the petitioners as made, is however, contrary to the fundamental concept on which MACPS introduced through the 6th Central Pay Commission operates. A bare reading of paragraph 2 of the MACPS would make it clear that it is the next higher Grade Pay which has to be given and*

*not the Grade Pay in the next hierarchical post, as was available under the ACP Scheme with reference to the pay scale of the next above hierarchical post. It is not in dispute that MACPS supersedes ACP Scheme which was in force till August 31, 2008. Therefore, after August 31, 2008 any financial upgradation would be confined to placement in the immediate next higher grade pay in the hierarchy of the recommended revised Pay Band. The use of word „merely“ in para 2 of the Scheme supports this interpretation. Paragraph 2 further clarifies that the higher Grade pay attached to the next promotional post in the hierarchy of the concerned cadre/organization will be given only at the time of regular promotion. Therefore, the claim that the petitioners should also be placed in the replacement Pay Band applicable to the next promotional post in the hierarchy as was available under the ACP Scheme is misplaced.*

*20. This very issue had come up for consideration before this Court in W.P (C) No. 3420/2010 R.S Sengor v. Union of India decided on April 04, 2011. In said case the petitioners were in PayBand-1 and had a corresponding grade pay of Rs. 1900/-. The next hierarchical post was also in PayBand-1 but had a grade pay of Rs. 2400/-. The petitioners therein claimed that since the next hierarchical post had a pay band of Rs. 2400/-, they should, on financial upgradation, under the MACPS, be granted the grade pay of Rs. 2400/-. However, what the respondents in that case had done was to grant the petitioner therein the grade pay of Rs. 2000/- which was the next higher grade pay though, not the grade pay corresponding to the next hierarchical post. Dismissing the writ petition the Division Bench held as under:-*

*“10. The question would be whether the hierarchy contemplated by the MACPS is in the immediately next higher Grade Pay or is it the Grade Pay of the next above Pay Band.*

*11. Whatever may be the dispute which may be raised with reference to the language of paragraph 2 of the MACPS the illustration as per para 4 of Annexure I to the OM, contents whereof have been extracted hereinabove, make it clear that it is the next higher Grade Pay which has to be given and not the Grade Pay in the next hierarchical post and thus we agree with the Respondents that Inspectors have to be given the Grade Pay Grade Pay after 10 years in the sum of Rs. 4800/- and not Rs. 5400/- which is the Grade Pay of the next Pay Band and relatable to the next hierarchical post. To put it pithily, the MACPS Scheme*

*requires the hierarchy of the Grade Pays to be adhered to and not the Grade Pay in the hierarchy of posts.”*

21. *This view has since been followed by another Division Bench of this Court in the decision reported as 193 (2012) DLT 577 Union of India v. Delhi Nurses Union (Regd.)*

22. *Therefore, merely because others who have been financial upgradation the pay scale of the promotional post in the hierarchy under the ACP Scheme and by operation of para 6 of MACPS, their pay is fixed with reference to the pay scale granted to them under the ACP Scheme, the petitioners would not get any right to be placed in such scales, since the language of the scheme makes it clear that the financial upgradation under ACP/MACPS are different than regular promotions in the grade.*

23. *Even otherwise, as held in R.S Sengor's case (supra) the MACPS requires the hierarchy of grade pay to be adhered to and not the grade pay in the hierarchy of posts. Both the schemes conferred benefit of financial upgradation to tide over the problems of stagnation and operate in their respective fields. Though, there is no challenge to the MACPS or any part thereof, yet it is beyond any cavil that the Courts by judicial review cannot interfere with a policy decision of a State unless it is shown to be patently arbitrary, discriminatory or mala-fide. In this case, there is no such claim made by the petitioners.”*

It is noticed that in a recent judgment (Union of India v V.K. Sharma 2017 SCC OnLine Del 8415) the issue was gone into, by a Division Bench. In that case, the officials were from the Central Secretariat Stenographer's Service (CSSS). They joined the Cabinet Secretariat (SW) in 1970s, also known as Research and Analysis Wing (R&AW) as Personal Assistants and were superannuated in ranks of Private Secretary (PS)/Principal Private Secretary (PPS)/ Under Secretary (US) at different points of time. During their tenure, they were once promoted as PS and with a pay scale equivalent to PB-2 with Grade Pay '4800/- before the Assured Career Progression Scheme (ACP) was introduced by the Government w.e.f. 09.08.1999. They were given second financial upgradation on completion of 24 years of service under the ACP scheme and were placed in the pay scale equivalent to PB-3 with Grade Pay of '6600/-. In terms of recommendations of the 5th Central Pay Commission (CPC), at the time when they were given the second financial upgradation to the rank of PPS/US under the ACP scheme, there was no concept of Grade Pay and the financial upgradation under the ACP scheme was to the next higher rank available in the hierarchy. Upon implementation of the MACP, 3rd financial upgradation was given to them on 22.10.2009 placing them in PB-3 in the scale of '15,600-39,100 with Grade Pay of

'7600/- This was sought to be recalled; their application before the Central Administrative Tribunal succeeded. The court held that:

*"11. As per the admitted facts of the case, the respondents were covered under the ACP scheme when it was introduced. Since they had already earned one promotion, they were given 2nd ACP on completion of 24 years of the service. As per the scheme of the ACP, they were put in the next scale in the hierarchy. After the 5th Pay Commission, their existing scales were revised and as per their existing scale, the 5th Pay Commission put them in the category of PB-3 in the scale Rs. 15600- 39100 with the Grade Pay of Rs. 6600/- It, therefore, is clear that they earned the Grade Pay of Rs. 6600 by virtue of their existing pay scale at the time when the 5th Pay Commission was implemented. They had earned that Pay Scale by virtue of grant of 2nd ACP. The MACP scheme was introduced w.e.f. 01.09.2008. Under MACP scheme, the employees covered under the scheme became entitled for upgradation to the next Grade Pay after 10 years, 20 years and 30 years of the service. The respondents, who were already in the category of PB-3, demanded the benefits under 3rd MACP to which they became entitled after completion of 30 years of their service. First it was granted, and then it was withdrawn on the advice of PAO and DOP&T.*

*12. The plea of the petitioners is that since the Pay Band Scale PB-3 starts with the Pay Band Scale Rs. 15600- 39100- with the Grade Pay of Rs. 5400/-, therefore, when their scale was revised, it should be presumed that they were entitled for the Grade Pay of Rs. 5400 on grant of 2nd ACP is totally fallacious. It is equally fallacious for the petitioners to claim that the grant of Grade Pay of Rs. 6600/- tantamounted to grant of the benefits of 3rd MACP.*

*13. Admittedly, on the grant of 2nd ACP, the respondents were put in the Pay Scale of Rs. 10,000-15200/- (5th CPC) and under the 5th Pay Commission, the corresponding scale that was given to them in PB-3 was Rs. 15,600-39,100 with the Grade Pay of Rs. 6600/- It, therefore, is clear that they were getting the Grade Pay of Rs. 6600 by virtue of them being placed in the said corresponding Pay Scale equivalent to Rs. 10000-325- 15200 pursuant to grant of 2nd ACP. They, therefore, has earned Grade Pay of Rs. 6600/- on revision of their pay by virtue of 5th Pay Commission and without reference to upgradation of 3rd MACP. The respondents, therefore, were entitled for the benefits under 3rd MACP after they become eligible for it.*

*14. Learned counsel for the respondents has drawn our intention to the Notification of Ministry of Finance, G.S.R. 622 (E) dated 29.08.2008, the First Schedule, Part-A, Section I which clearly*

*shows that PB-3 which contains the Pay Scale Rs. 15600-39100 also contains the next Grade Pay of Rs. 7600. Therefore, it is clear that the respondents, under 3rd MACP, were entitled for upgradation to the next Grade Pay which is Rs. 7600/-. It is also a fact that initially the petitioners had given the Grade Pay of Rs. 7600/- to the respondents, but subsequently on the basis of communications of PAO and advice of DOP&T, it was withdrawn, which act of petitioners was illegal and unjustified.”*

16. In another previous decision (Suresh Chand Garg v Govt. of NCT of Delhi 2016 SCC Online 3124) the court firstly noticed the illustration in para 28.(B) of the MACPS, which is as follows:

*“If a Government servant (LDC) in PB-1 in the Grade Pay of Rs. 1900 is granted 1st financial upgradation under the MACPS on completion of 10 years of service in the PB-1 in the Grade Pay of Rs. 2000 and 5 years later he gets 1st regular promotion (UDC) in PB-1 in the Grade Pay of Rs. 2400, the 2nd financial upgradation under MACPS (in the next Grade Pay w.r.t Grade Pay held by Government servant) will be granted on completion of 20 years of service in PB-1 in the Grade Pay of Rs. 2800. On completion of 30 years of service, he will get 3rd ACP in the Grade Pay of Rs. 4200. However, if two promotions are earned before completion of 20 years, only 3rd financial upgradation would be admissible on completion of 10 years of service in Grade Pay from the date 2nd promotion or at 30th year of service, whichever is earlier.”*

The court analyzed the effect of the provision as follows:

*“Illustration in paragraph 28(B) reflects that where an employee has earned two promotions before completion of 20 years, he would be entitled to a third financial upgradation on completion of 10 years of service in the grade pay from the date of the second promotion or on 30 years of service, whichever is earlier. An employee need not, therefore, have worked in the grade pay/pay scale applicable to the second promotion for a period of 10 years, provided he had already worked for a period of 30 years on or after the MACP Scheme became applicable. As on 1st September, 2008, the petitioner had already put in more than 35 years of service. Therefore, the petitioner would meet the qualifying continuous regular service requirement and was entitled to a third financial upgradation under the MACP Scheme.”*

17. The court reasoned as follows, and allowed the claim for upgradation:

*“7. As noticed above, the petitioner was promoted as Vice-Principal on 8th January, 2008, but the pay scale given to him*

*was the same as that was granted to him under the ACP Scheme of Rs.7500-12000. After implementation of the Sixth Pay Commission, the petitioner was given grade pay of Rs.5400 in PB-3. Thus, the first factor noticed in paragraph 17 though relevant, was not a factor, which would deny and deprive the petitioner of the benefit under the MACP Scheme. The second factor recorded by the Tribunal in paragraph 17 refers to the existing pay scales/grade pay applicable to TGT and PGT after implementation of the Sixth Pay Commission and holds that the petitioner would not be entitled to include and count the period from 21st November, 1973 to 14th February, 1992. It is difficult to accept the said reasoning. The question of financial upgradation is not to be examined with reference to the pay scale prescribed as a result of the Sixth Pay Commission. The question and factual position is to be examined by referring to actual facts, and whether or not the government servant was granted financial upgradation or higher pay after he was appointed with reference to the regular service rendered by the employee. According to the factual position, the petitioner on appointment as PGT (Maths) on 15th February, 1992 was already enjoying TGT senior scale of Rs.1640-2900 granted with effect from 1st January, 1986 and, therefore, on appointment as PGT on 15th February, 1992, he did not draw an enhancement or increase in pay scale. His pay scale continued to remain Rs.1640-2900. The issue of review of pay scale may become relevant in case there is merger of posts, etc. Albeit, such a case is not made out by the respondents or stated in the aforesaid paragraph of the impugned order. With regard to paragraph 18, we have already referred to paragraphs 1 and 2 of the MACP Scheme and paragraph 28(B) and the appended illustration. It may also be noted that the promotion earned by the petitioner to the post of Vice-Principal from 8th January, 2008 was inconsequential and without any financial upgradation, for the petitioner was already enjoying the pay scale of Rs.7500-12000 since 9th August, 1999 upon financial upgradation under the ACP Scheme.*

*9. No other point or issue was raised and argued before us.*

*10. For the aforesaid reasoning, we would allow the present writ petition and set aside the order dated 6th November, 2012 passed by the Tribunal and hold that the petitioner would be entitled to a third financial upgradation with effect from 1st September, 2008. As per Section 1, Part-A of the first schedule of the Central Civil Services (Revised Pay) Rules, 2008, the petitioner would be entitled to grade pay of Rs. 6600 in PB-3 with effect from the said date. The respondents will accordingly*

*calculate the arrears, including arrears of pension, consequent to the petitioner's retirement on 28th February, 2011 and pay the same to the petitioner within a period of three months from the date a copy of this order is made available to them. In case the said payment is not made within three months, the respondents will be liable to pay interest @ 8% per annum on the aforesaid amount from the date of this judgment till payment is made. The petitioner is also entitled to costs, which are assessed at Rs.10,000/-.* The writ petition is accordingly allowed and disposed of in the aforesaid terms.”

18. In the present case, it is noticed that the petitioners' counterparts were granted the third financial upgradation, although they, like them were given the GP of ₹5400/-; they perform similar, if not identical functions. FC Jain (supra) is an authority that if such broadly identical functions are involved, both categories ought to be treated alike in regard to interpretation of pay norms, by the organization. Therefore, the principle of parity would result in acceptance of the petitioner's claim. The second aspect which this court would emphasize is that unlike “stagnation” or performance based increments, or placement in higher scales, the grant of ₹5400/- is automatic, after the happening of a certain event, i.e. completion of four years' service. This is quite different from promotion or placement in the selection grade, which is performance dependent or based on the availability of a few slots or vacancies (usually confined to a portion of the entire cadre: say 20%). The last reason is that both V.K. Sharma (supra) and Suresh Chand Garg (supra), in somewhat similar circumstances, accepted that the grant of a higher grade pay did not preclude the grant of the third financial upgradation.

19. In view of the foregoing analysis, the court is of opinion that the petition has to succeed. As a consequence, the respondents are directed to revise and fix the pay scales by granting the third financial upgradation, to the petitioners. They shall be entitled to consequential arrears and all consequential benefits; the payments shall carry interest @ 9 per cent per annum. The payouts shall be made to the petitioners within 8 weeks. The petition is allowed, in these terms.”

**9. The Hon'ble High Court of Delhi after a detailed examination of the matter held that the grant of higher pay scale did not preclude the grant of the 3<sup>rd</sup> financial upgradation. We are in respectful agreement with the same.**

**10. We had noted with the regret that even when the matters are finalized in the Hon'ble Apex Court by dismissal of the SLP from a decision of the one**

***High Court the government periodically files different SLPs from the orders of different High Courts and without knowing that one bench has already passed an order the Hon'ble Supreme Court is called upon to deliberate upon the matter once again. This is hardly a desirable matrix.***

11. Therefore, we are not in agreement with the view expressed by the Ahmedabad Bench. But we are in respectful agreement with a view expressed by the Ernakulam Bench in a later case and the decision of the Hon'ble High Court of Delhi as stated above. Therefore, OA has merit. Applicants are eligible for the 3<sup>rd</sup> financial upgradation despite the fact that they were given the non functional grade pay earlier. OA is allowed. Benefits to be made available within two months next. But of course subject to any decision the Hon'ble Apex Court may pass in the matter at the appropriate time. OA is allowed as above. No costs.

**(C V SANKAR)  
MEMBER (A)**

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

/rsh/

**Annexures referred to by the applicant in OA No.170/01621/2018**

Annexure A1	Copy of the Order dated 29.06.2018
Annexure A2	Copy of the Show Cause Notice dated 4.8.2014
Annexure A3	Copy of the Legal Notice dated 25.1.2016
Annexure A4	Copy of the Final reply dated 09.10.2017
Annexure A5	Copy of the Hon'ble High Court order in WP (C) No.9357/2016
Annexure A6	Copy of the order dated 15.11.2018 in OA No.68/2015 of Hon'ble CAT, Ernakulam Bench
Annexure A7	Copy of the Part A Section I of the First Schedule to CCS(RP) Rules, 2008
Annexure A8	Copy of the Part C Section I and II of The First Schedule to CCS(RP) Rules, 2008
Annexure A9	Copy of the letter dated 21.11.2008
Annexure A10	Copy of the letter dated 20.06.2016
Annexure A11	Copy of the relevant pages of seniority list of Superintendents

**Annexures referred to by the respondents**

Annexure R1	Copy of the DoPT OM dated 19.05.2019
Annexure R2	Copy of the DoPT Circular dated 21.07.2010
Annexure R3	Copy of the CBEC Circular dated 20.05.11
Annexure R4	Copy of the CBEC Circular dated 6.5.2013
Annexure R5	Copy of the CBEC 20.06.2016
Annexure R7	Copy of the CBEC Circular dated 20.05.2018
Annexure R8	Copy of the CBEC Circular dated 01.11.2018

**Annexures referred to by the applicant in OA No.170/01622/2018**

Annexure-A1:	Copy of the order dated 31.01.2018
Annexure-A2:	Copy of the representation dated 16.11.2017
Annexure-A3:	Copy of the letter dated 04.04.2018
Annexure-A4:	Copy of the Hon'ble High Court of Delhi order WP (C) No. 9357/2016
Annexure-A5:	Copy of the order dated 15.11.2018 in OA No. 68/2015
Annexure-A6:	Copy of the Part A First Schedule to CCS (RP) Rules, 2008
Annexure-A7:	Copy of the Part C First Schedule to CCS (RP) Rules, 2008
Annexure-A8:	Copy of the letter dated 21.11.2008

**Annexures referred to by the respondents.**

Annexure-R1:	Copy of the OM dated 19.05.2009
Annexure-R2:	Copy of the DoPT clarification dated 21.07.2010
Annexure-R3:	Copy of the Board circular dated 20.05.2011
Annexure-R4:	Copy of the Board's letter dated 06.05.2013
Annexure-R5:	Copy of the CBEC's letter dated 20.06.2016
Annexure-R6:	Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench
Annexure R7:	Copy of the circular dated 1.11.2018
Annexure-R7:	Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench

**Annexures referred to by the applicant in OA NO.170/01703/2018**

Annexure-A1: Copy of the show cause notice dated 04.08.2014

Annexure-A2: Copy of the reply dated 17.12.2014

Annexure-A3: Copy of the reply dated 19.09.2017

Annexure-A4: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

Annexure-R1: Copy of the OM dated 19.05.2009

Annexure-R2: Copy of the DoPT clarification dated 21.07.2010

Annexure-R3: Copy of the Board circular dated 20.05.2011

Annexure-R4: Copy of the Board's letter dated 06.05.2013

Annexure-R5: Copy of the CBEC's letter dated 20.06.2016

Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench

Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench

Annexure-R8: Copy of the 2<sup>nd</sup> ACP Pay Fixation order

**Annexures referred to by the applicant in OA NO.170/01704/2018,**

Annexure-A1: Copy of the show cause notice dated 04.08.2014

Annexure-A2: Copy of the common reply dated 14.09.2014 by the applicant through their Advocates (Phadke Associates) to the SCN

Annexure-A3: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

Annexure-R1: Copy of the OM dated 19.05.2009

Annexure-R2: Copy of the DoPT clarification dated 26.07.2010

Annexure-R3: Copy of the Board circular dated 20.05.2011

Annexure-R4: Copy of the Board's letter dated 06.05.2013

Annexure-R5: Copy of the CBEC's letter dated 20.06.2016

Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench

Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench

Annexure-R8: Copy of the 2<sup>nd</sup> ACP Pay Fixation order

**Annexures referred to by the applicant in OA NO.170/01712/2018,**

Annexure-A1: Copy of the order dated 29.06.2018

Annexure-A2: Copy of the show cause notice dated 04.08.2014

Annexure-A3: Copy of the written submission dated 09.05.2018

**Annexures referred to by the respondents.**

Annexure-R1: Copy of the OM dated 19.05.2009

Annexure-R2: Copy of the DoPT clarification dated 21.07.2010

Annexure-R3: Copy of the Board circular dated 20.05.2011  
Annexure-R4: Copy of the Board's letter dated 06.05.2013  
Annexure-R5: Copy of the CBEC's letter dated 20.06.2016  
Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench  
Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench  
Annexure-R8: Copy of the 2<sup>nd</sup> ACP Pay Fixation order

**Annexures referred to by the applicant in OA NO.170/01832/2018**

Annexure-A1: Copy of the show cause notice dated 04.08.2014  
Annexure-A2: Copy of the common reply dated 14.09.2014  
Annexure-A3: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

Annexure-R1: Copy of the OM dated 19.05.2009  
Annexure-R2: Copy of the DoPT clarification dated 21.07.2010  
Annexure-R3: Copy of the Board circular dated 20.05.2011  
Annexure-R4: Copy of the Board's letter dated 06.05.2013  
Annexure-R5: Copy of the CBEC's letter dated 20.06.2016  
Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench  
Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench  
Annexure-R8: Copy of the 2<sup>nd</sup> ACP Pay Fixation order

**Annexures referred to by the applicant in OA NO.170/01833/2018**

Annexure-A1: Copy of the show cause notice dated 04.08.2014  
Annexure-A2: Copy of the common reply dated 14.09.2014  
Annexure-A3: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

Annexure-R1: Copy of the OM dated 19.05.2009  
Annexure-R2: Copy of the DoPT clarification dated 26.07.2010  
Annexure-R3: Copy of the Board circular dated 20.05.2011  
Annexure-R4: Copy of the Board's letter dated 06.05.2013  
Annexure-R5: Copy of the CBEC's letter dated 20.06.2016  
Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench  
Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench  
Annexure-R8: Copy of the 2<sup>nd</sup> ACP Pay Fixation order

**Annexures referred to by the applicant in OA NO.170/01834/2018**

Annexure-A1: Copy of the show cause notice dated 04.08.2014

Annexure-A2: Copy of the common reply dated 14.09.2014

Annexure-A3: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

Annexure-R1: Copy of the OM dated 19.05.2009

Annexure-R2: Copy of the DoPT clarification dated 26.07.2010

Annexure-R3: Copy of the Board circular dated 20.05.2011

Annexure-R4: Copy of the Board's letter dated 06.05.2013

Annexure-R5: Copy of the CBEC's letter dated 20.06.2016

Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench

Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench

Annexure-R8: Copy of the 2<sup>nd</sup> ACP Pay Fixation order

**Annexures referred to by the applicant in OA NO.170/01835/2018**

Annexure-A1: Copy of the show cause notice dated 04.08.2014

Annexure-A2: Copy of the common reply dated 14.09.2014

Annexure-A3: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

Annexure-R1: Copy of the OM dated 19.05.2009

Annexure-R2: Copy of the DoPT clarification dated 26.07.2010

Annexure-R3: Copy of the Board circular dated 20.05.2011

Annexure-R4: Copy of the Board's letter dated 06.05.2013

Annexure-R5: Copy of the CBEC's letter dated 20.06.2016

Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench

Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench

Annexure-R8: Copy of the 2<sup>nd</sup> ACP Pay Fixation order

**Annexures referred to by the applicant in OA NO.170/01836/2018**

Annexure-A1: Copy of the show cause notice dated 04.08.2014

Annexure-A2: Copy of the common reply dated 14.09.2014

Annexure-A3: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

Annexure-R1: Copy of the OM dated 19.05.2009

Annexure-R2: Copy of the DoPT clarification dated 26.07.2010

Annexure-R3: Copy of the Board circular dated 20.05.2011

Annexure-R4: Copy of the Board's letter dated 06.05.2013

Annexure-R5: Copy of the CBEC's letter dated 20.06.2016

Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench

Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench

Annexure-R8: Copy of the 2<sup>nd</sup> ACP Pay Fixation order

**Annexures referred to by the applicant in OA NO.170/01837/2018**

Annexure-A1: Copy of the show cause notice dated 04.08.2014

Annexure-A2: Copy of the common reply dated 14.09.2014

Annexure-A3: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

Annexure-R1: Copy of the OM dated 19.05.2009

Annexure-R2: Copy of the DoPT clarification dated 26.07.2010

Annexure-R3: Copy of the Board circular dated 20.05.2011

Annexure-R4: Copy of the Board's letter dated 06.05.2013

Annexure-R5: Copy of the CBEC's letter dated 20.06.2016

Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench

Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench

Annexure-R8: Copy of the 2<sup>nd</sup> ACP Pay Fixation order

**Annexures referred to by the applicant in OA NO.170/01838/2018,**

Annexure-A1: Copy of the show cause notice dated 04.08.2014

Annexure-A2: Copy of the common reply dated 14.09.2014

Annexure-A3: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

Annexure-R1: Copy of the OM dated 19.05.2009

Annexure-R2: Copy of the DoPT clarification dated 26.07.2010

Annexure-R3: Copy of the Board circular dated 20.05.2011

Annexure-R4: Copy of the Board's letter dated 06.05.2013

Annexure-R5: Copy of the CBEC's letter dated 20.06.2016

Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench

Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench

Annexure-R8: Copy of the 2<sup>nd</sup> ACP Pay Fixation order

**Annexures referred to by the applicant in OA NO.170/01839/2018**

Annexure-A1: Copy of the show cause notice dated 04.08.2014

Annexure-A2: Copy of the common reply dated 14.09.2014

Annexure-A3: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

Annexure-R1: Copy of the OM dated 19.05.2009  
Annexure-R2: Copy of the DoPT clarification dated 26.07.2010  
Annexure-R3: Copy of the Board circular dated 20.05.2011  
Annexure-R4: Copy of the Board's letter dated 06.05.2013  
Annexure-R5: Copy of the CBEC's letter dated 20.06.2016  
Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench  
Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench  
Annexure-R8: Copy of the 2<sup>nd</sup> ACP Pay Fixation order

**Annexures referred to by the applicant in OA NO.170/01841/2018**

Annexure-A1: Copy of the show cause notice dated 04.08.2014  
Annexure-A2: Copy of the common reply dated 14.09.2014  
Annexure-A3: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

Annexure-R1: Copy of the OM dated 19.05.2009  
Annexure-R2: Copy of the DoPT clarification dated 21.07.2010  
Annexure-R3: Copy of the Board circular dated 20.05.2011  
Annexure-R4: Copy of the Board's letter dated 06.05.2013  
Annexure-R5: Copy of the CBEC's letter dated 20.06.2016  
Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench  
Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench  
Annexure-R8: Copy of the 2<sup>nd</sup> ACP Pay Fixation order

**Annexures referred to by the applicant in OA NO.170/01844/2018**

Annexure-A1: Copy of the show cause notice dated 04.08.2014  
Annexure-A2: Copy of the common reply dated 14.09.2014  
Annexure-A3: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

Annexure-R1: Copy of the OM dated 19.05.2009  
Annexure-R2: Copy of the DoPT clarification dated 21.07.2010  
Annexure-R3: Copy of the Board circular dated 20.05.2011  
Annexure-R4: Copy of the Board's letter dated 06.05.2013  
Annexure-R5: Copy of the CBEC's letter dated 20.06.2016  
Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench  
Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench

**Annexures referred to by the applicant in OA NO.170/01845/2018**

Annexure-A1: Copy of the show cause notice dated 04.08.2014

Annexure-A2: Copy of the common reply dated 14.09.2014

Annexure-A3: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

Annexure-R1: Copy of the OM dated 19.05.2009

Annexure-R2: Copy of the DoPT clarification dated 21.07.2010

Annexure-R3: Copy of the Board circular dated 20.05.2011

Annexure-R4: Copy of the Board's letter dated 06.05.2013

Annexure-R5: Copy of the CBEC's letter dated 20.06.2016

Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench

Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench

**Annexures referred to by the applicant in OA NO.170/01846/2018**

Annexure-A1: Copy of the show cause notice dated 04.08.2014

Annexure-A2: Copy of the common reply dated 14.09.2014

Annexure-A3: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

Annexure-R1: Copy of the OM dated 19.05.2009

Annexure-R2: Copy of the DoPT clarification dated 21.07.2010

Annexure-R3: Copy of the Board circular dated 20.05.2011

Annexure-R4: Copy of the Board's letter dated 06.05.2013

Annexure-R5: Copy of the CBEC's letter dated 20.06.2016

Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench

Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench

**Annexures referred to by the applicant in OA NO.170/01847/2018**

Annexure-A1: Copy of the show cause notice dated 04.08.2014

Annexure-A2: Copy of the common reply dated 14.09.2014

Annexure-A3: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

Annexure-R1: Copy of the OM dated 19.05.2009

Annexure-R2: Copy of the DoPT clarification dated 21.07.2010

Annexure-R3: Copy of the Board circular dated 20.05.2011

Annexure-R4: Copy of the Board's letter dated 06.05.2013

Annexure-R5: Copy of the CBEC's letter dated 20.06.2016

Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench

Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench

**Annexures referred to by the applicant in OA NO.170/01848/2018**

Annexure-A1: Copy of the show cause notice dated 04.08.2014

Annexure-A2: Copy of the common reply dated 14.09.2014

Annexure-A3: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

Annexure-R1: Copy of the OM dated 19.05.2009

Annexure-R2: Copy of the DoPT clarification dated 21.07.2010

Annexure-R3: Copy of the Board circular dated 20.05.2011

Annexure-R4: Copy of the Board's letter dated 06.05.2013

Annexure-R5: Copy of the CBEC's letter dated 20.06.2016

Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench

Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench

**Annexures referred to by the applicant in OA NO.170/01849/2018**

Annexure-A1: Copy of the show cause notice dated 04.08.2014

Annexure-A2: Copy of the common reply dated 14.09.2014

Annexure-A3: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

Annexure-R1: Copy of the OM dated 19.05.2009

Annexure-R2: Copy of the DoPT clarification dated 21.07.2010

Annexure-R3: Copy of the Board circular dated 20.05.2011

Annexure-R4: Copy of the Board's letter dated 06.05.2013

Annexure-R5: Copy of the CBEC's letter dated 20.06.2016

Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench

Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench

**Annexures referred to by the applicant in OA NO.170/01850/2018**

Annexure-A1: Copy of the show cause notice dated 04.08.2014

Annexure-A2: Copy of the common reply dated 14.09.2014

Annexure-A3: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

- Annexure-R1: Copy of the OM dated 19.05.2009
- Annexure-R2: Copy of the DoPT clarification dated 21.07.2010
- Annexure-R3: Copy of the Board circular dated 20.05.2011
- Annexure-R4: Copy of the Board's letter dated 06.05.2013
- Annexure-R5: Copy of the CBEC's letter dated 20.06.2016
- Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench
- Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench

**Annexures referred to by the applicant in OA NO.170/01851/2018**

- Annexure-A1: Copy of the show cause notice dated 04.08.2014
- Annexure-A2: Copy of the common reply dated 14.09.2014
- Annexure-A3: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

- Annexure-R1: Copy of the OM dated 19.05.2009
- Annexure-R2: Copy of the DoPT clarification dated 21.07.2010
- Annexure-R3: Copy of the Board circular dated 20.05.2011
- Annexure-R4: Copy of the Board's letter dated 06.05.2013
- Annexure-R5: Copy of the CBEC's letter dated 20.06.2016
- Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench
- Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench

**Annexures referred to by the applicant in OA NO.170/01852/2018**

- Annexure-A1: Copy of the show cause notice dated 04.08.2014
- Annexure-A2: Copy of the common reply dated 14.09.2014
- Annexure-A3: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

- Annexure-R1: Copy of the OM dated 19.05.2009
- Annexure-R2: Copy of the DoPT clarification dated 21.07.2010
- Annexure-R3: Copy of the Board circular dated 20.05.2011
- Annexure-R4: Copy of the Board's letter dated 06.05.2013
- Annexure-R5: Copy of the CBEC's letter dated 20.06.2016
- Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench
- Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench

**Annexures referred to by the applicant in OA NO.170/01853/2018**

Annexure-A1: Copy of the show cause notice dated 04.08.2014

Annexure-A2: Copy of the common reply dated 14.09.2014

Annexure-A3: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

Annexure-R1: Copy of the OM dated 19.05.2009

Annexure-R2: Copy of the DoPT clarification dated 21.07.2010

Annexure-R3: Copy of the Board circular dated 20.05.2011

Annexure-R4: Copy of the Board's letter dated 06.05.2013

Annexure-R5: Copy of the CBEC's letter dated 20.06.2016

Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench

Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench

**Annexures referred to by the applicant in OA NO.170/01854/2018**

Annexure-A1: Copy of the show cause notice dated 04.08.2014

Annexure-A2: Copy of the common reply dated 14.09.2014

Annexure-A3: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

Annexure-R1: Copy of the OM dated 19.05.2009

Annexure-R2: Copy of the DoPT clarification dated 21.07.2010

Annexure-R3: Copy of the Board circular dated 20.05.2011

Annexure-R4: Copy of the Board's letter dated 06.05.2013

Annexure-R5: Copy of the CBEC's letter dated 20.06.2016

Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench

Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench

**Annexures referred to by the applicant in OA NO.170/01855/2018**

Annexure-A1: Copy of the show cause notice dated 04.08.2014

Annexure-A2: Copy of the common reply dated 14.09.2014

Annexure-A3: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

Annexure-R1: Copy of the OM dated 19.05.2009

Annexure-R2: Copy of the DoPT clarification dated 21.07.2010

Annexure-R3: Copy of the Board circular dated 20.05.2011

Annexure-R4: Copy of the Board's letter dated 06.05.2013

Annexure-R5: Copy of the CBEC's letter dated 20.06.2016

Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench

Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench

**Annexures referred to by the applicant in OA NO.170/01856/2018**

Annexure-A1: Copy of the show cause notice dated 04.08.2014

Annexure-A2: Copy of the common reply dated 14.09.2014

Annexure-A3: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

Annexure-R1: Copy of the OM dated 19.05.2009

Annexure-R2: Copy of the DoPT clarification dated 21.07.2010

Annexure-R3: Copy of the Board circular dated 20.05.2011

Annexure-R4: Copy of the Board's letter dated 06.05.2013

Annexure-R5: Copy of the CBEC's letter dated 20.06.2016

Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench

Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench

**Annexures referred to by the applicant in OA NO.170/01857/2018**

Annexure-A1: Copy of the show cause notice dated 04.08.2014

Annexure-A2: Copy of the common reply dated 14.09.2014

Annexure-A3: Copy of the impugned order dated 29.06.2018

**Annexures referred to by the respondents.**

Annexure-R1: Copy of the OM dated 19.05.2009

Annexure-R2: Copy of the DoPT clarification dated 21.07.2010

Annexure-R3: Copy of the Board circular dated 20.05.2011

Annexure-R4: Copy of the Board's letter dated 06.05.2013

Annexure-R5: Copy of the CBEC's letter dated 20.06.2016

Annexure-R6: Copy of the forwarding letter of order of Central Administrative Tribunal, Ahmedabad Bench

Annexure-R7: Copy of the forwarding letter of order of Central Administrative Tribunal, Ernakulam Bench