

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No.180/00745/2019**

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**Original Application No.180/01001/2018**

**Tuesday, this 28<sup>th</sup> Day of September 2021**

**C O R A M :**

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER**

**HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

**Original Application No.180/00745/2019**

1. K. Ramabhadran, aged 59 years,  
S/o Late R. Kunjan Assari, Junior Design Officer,  
Design & Documentation Bureau, Naval Ship Yard,  
Naval Base, Kochi – 682 004. Permanent Address: 'Nandanam',  
TC 41/2659 (1) SRA – 114, Manacaud Post.
2. D. Dileep Kumar, aged 56 years,  
S/o Late N. Divakaran, Junior Design Officer,  
Headquarters, Southern Naval Command, Naval Base,  
Kochi-682004. Residing at: 'Dileep Bhavan', Chenankarayil,  
Kalleli Bhagam P.O., Karunagapally, Kollam – 690 519.
3. Adolphus Attlee Bivera, aged 60 years,  
S/o Late Benzigar Bivera, Retd. Junior Design Officer,  
Residing at: Nestle, Prasanthi Nagar, Edappally P.O., Kochi – 682 024.
4. V. Biju, aged 58 years, S/o Vamadevan K., Junior Design Officer,  
Defence Standardisation Detachment, Naval Base,  
Kochi – 682 004. Residing at: Putooram Veedu,  
South Mankuzhy, Pullikkanakku P.O., Kayamkulam – 690 537.
5. A.P. Raju, aged 58 years, S/o Late A.E. Padmanabhan, Junior Design Officer,  
HRD, Naval Ship Repair Yard, Naval Base, Kochi – 682 004.  
Residing at: Krishna Kripa, Ayampallikavu Road, Eroor,  
Ernakulam, Kochi – 682 306.
6. C.K. Omanakuttam, Aged 58 years, S/o Late C. Karunakara Kurup,  
Junior Design Officer, India Naval Field Design Team, C/o Cochin Shipyard Ltd.,  
Perumanoor P.O., Kochi – 682 015. Residing at: Chempilayil House, Puthukkary,  
Mithrakkary P.O., Alappuzha – 689 595. ...Applicants

**(By Advocate: Mr.T.C.G. Swamy)**

**v e r s u s**

1. Union of India represented by the Secretary to the Government of India  
Ministry of Defence (Navy), New Delhi – 110011.
2. The Chief of Naval Staff, Integrated Headquarters of Ministry of Defence (Navy),  
New Delhi – 110011.

3. The Principal Director, Directorate of Civilian Personnel,  
Integrated Headquarters of Ministry of Defence (Navy),  
Room No. 100, 1<sup>st</sup> Floor, Talkatora Stadium Annex Building,  
New Delhi – 110011.
4. Flag Officer Commanding-in-Chief,  
Southern Naval Command, Naval Base, Kochi – 682 004.
5. Pradeep Kumar Pattanayak, aged 60 years, S/o. late Gadadhara Pattanayak,  
Junior Design Officer, (Electrical) (Retd), Planning Division,  
Ship Building Centre, Naval Base: Post Visakhapatnam, Pin – 530014.  
Residing at C/o. Sri. Sitaram Panda, Door No. 38-30-89/13, Aruna Enclave,  
Flat No. 8, Sai Nagar, Marripallem, Visakhapatnam-530018 (AP) - 83739 59073.
6. Sitaram Panda, aged 59 years, S/o late Hadu Panda,  
Junior Design Officer (Electrical), Documentation Department, Ship Building  
Centre, Naval Base Post Visakhapatnam: 530014,  
Residing at Door No. 38-30-89/13, Aruna Enclave, Flat No. 8, Sai Nagar,  
Marripallem, Visakhapatnam-530018 (AP), Mob: 7095821917.
7. Muralidhar Maharana, aged 59 years, S/o. late Radhamohan Maharana,  
Junior Design Officer (Electrical), Planning Division, Ship Building Centre,  
Naval Base: Post Visakhapatnam : 530 014, Residing at Door No. 502,  
Sheshadri, Happy Home Apartment, Old IT Junction, Kancharapala,  
Visakhapatnam - 530 008.
8. C. Benny, aged 58 years, S/o. late Paily Chakkappan, Junior Design Officer,  
Integrated Head Quarters, Ministry of Defence (Naw), Directorate of Engineering,  
Sena Bhavan, New Delhi - 110 011. Residing at: Flat No. 946, Sect. 37,  
Noida, Uttar Pradesh, Pin - 201301,
9. Purna Chandra Panda, aged 59 years, S/o.S.N. Panda, Asst. Director,  
Junior Design Officer (L), Asst. Director, Integrated Head Quarters,  
Ministry of Defence (Navy), R.K. Puram, New Delhi - 110022.  
Mob: 8588928676. Residing at Flat No. 1090, Type -4, Sect. 12,  
RK Puram, New Delhi - 110 022.
10. Ram Babu Mishra, aged 60 years, S/o. late Avadhesh Narayan Mishra,  
Junior Design Officer (Retd), Asst. Director, Integrated Head Quarters,  
Ministry of Defence (Navy), Directorate of Electrical Engineering, Sea Bhavan,  
New Delhi. - 110011. Residing at Flat No. 111, Pocket 3, Sector/ 19,  
Akshardhan Apartment, Dwaraka, New Delhi - 110 075. ...Respondents

**(By Advocate: Mr. Ratish H., ACGSC for R 1 - 4 & Ms.Sreekala T.N. For R 5 - 10)**

**Original Application No.180/01001/2018**

D. Sivaprasad, aged 63 years, S/o S. Divakaran, (Retd. Assistant  
/Office of the Registrar of Companies, Company Law Bhavan,  
BMC Road, Kochi – 682 021). Residing at: “Swathi”, (Anandalayam),  
Prakulam P.O., Kollam District, Pin: 691 602. ...Applicant

**(By Advocate: Mr. T.C.G. Swamy )**

**v e r s u s**

1. Union of India represented by the  
Secretary to the Government of India  
Ministry of Corporate Affairs, Shastri Bhavan, New Delhi – 110001.

2. The Regional Director  
Ministry of Corporate Affairs,  
Shastri Bhavan, Chennai – 600006.
3. The Registrar of Companies  
Kerala and Lakshadweep,  
Company Law Bhavan, BMC Road,  
Thrikkakara, Cochin – 682 021. ...Respondents

**(By Advocate: Mr.Rajesh Sukumaran K.)**

This application having been heard on 15<sup>th</sup> September 2021, the Tribunal on 28<sup>th</sup> September 2021 delivered the following :

### **ORDER**

**Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

The question that is being addressed in these OAs in short is whether the retrospective effect given to the MACP (Modified Assured Career Progression) Scheme can take away the right which is argued to have been accrued for the grant of benefits under the ACP (Assured Career Progression) Scheme between 01.09.2008 and 19.05.2009.

2. In O.A/1001/18, the applicant is a retired Assistant of the Department of Ministry of Corporate Affairs, whose last posting was in the Office of the Registrar of Companies, Kochi. While working as a Lower Division Clerk, the applicant was granted the first financial upgradation with effect from 09.08.1999 in the scale of pay attached to the post of Upper Division Clerk i.e., Rs.4000-6000 (PB-1 plus GP Rs.2400/- 6<sup>th</sup> CPC) under the ACP Scheme which was introduced as per the DoP&T OM dated 09.08.1999 produced at Annexure A-1. The applicant submits that he should have been granted 2<sup>nd</sup> financial upgradation on completion of 24 years of service with

effect from 26.11.2008 in the scale of pay attached to the post of Assistant, which at that time was in PB-2 plus GP Rs.4,200/-, in terms of the ACP Scheme. However, the respondents did not convene the DPC (Departmental Promotion Committee). Meanwhile the MACP Scheme was introduced through the DoP&T OM dated 19.05.2009, produced at Annexure A-2. This Scheme was implemented with retrospective effect from 01.09.2008 and the applicant submits that his vested right to get the 2<sup>nd</sup> financial upgradation with effect from 26.11.2008 in the scale of pay attached to the post of Assistant in PB-2 plus GP Rs.4200/- was thus taken away. On the other hand, he was given only the 2<sup>nd</sup> financial upgradation under the MACP Scheme in PB-1 plus GP Rs.2800/- resulting in a monthly loss of Rs.1,400/- in the Grade Pay/Basic Pay plus allowances thereon.

3. In O.A/745/19 filed on 04.10.2019 the six applicants were working under the Flag Officer Commanding-in-Chief, Southern Naval Command, Naval Base, Kochi as Junior Design Officers. They are seeking financial upgradation under the ACP Scheme which was due for them at different dates when they completed 24 years of services, between 01.09.2008 and 19.05.2009. Their contention is that if the ACP Scheme had been continued till the date of the introduction of the MACP Scheme i.e., till 19.05.2009, all of them would have been granted the benefit of 2<sup>nd</sup> financial upgradation under the ACP Scheme which was in the scale of pay of PB-3 plus GP Rs.5400/-. All the vacancies in the post of Senior Design Officer have to be filled by promotion from the feeder post of Junior Design Officer carrying

the then scale of pay of PB-2 plus GP Rs.4600/- as per the Recruitment Rules. They submit that these benefits were not extended to them on the due dates only for the reason that the MACP Scheme which was issued on 19.05.2009 was given retrospective effect from 01.09.2008.

4. The relief sought by the applicant in O.A/1001/18 is thus for a declaration that he is entitled to be granted the benefit of 2<sup>nd</sup> financial upgradation under the ACP Scheme in PB-2 plus GP Rs.4200/- with effect from 26.11.2008. This is being claimed in the light of the judgments of the Madras High Court and Delhi High Court produced by him at Annexure A3 and A4 in this O.A. He has also asked for a direction to grant all the consequential benefits including arrears of pay and allowances, arrears of pension and other retirement benefits. In O.A/745/19 the relief asked for by the six applicants is for a declaration that they are entitled to be granted benefits of the 2<sup>nd</sup> financial upgradation under the ACP Scheme in PB-3 plus GP Rs.5400/- with effect from the dates when they completed 24 years of service from the dates of their initial appointments as Draughtsman. They too depend on the aforementioned Madras High Court and Delhi High Court Judgments produced in that O.A at Annexures A-6 and A-7. They also seek further direction to grant all the consequential benefits thereof including arrears of pay and allowances, arrears of pension and other retirement benefits. Further, in O.A/745/19, six other Junior Design Officers have impleaded themselves as Respondents Nos. 5 to 10. They too claim that they should have got the 2<sup>nd</sup> financial upgradation under the ACP Scheme on

completion of 24 years of service between 01.09.2008 and 19.05.2009 the date on which orders relating to MACP was issued by DoP&T. They had made representations to the authorities in this regard seeking the aforesaid benefit; they were informed that the legal question is to be finally decided and that the present O.A.745/19 is pending before this Tribunal dealing with the same question of law. Since the same legal question has a direct impact on them and the original applicants belong the same cadre, they prayed for impleading themselves as respondents in the O.A. and to be heard on the question of law involved. This Tribunal accordingly allowed them to be impleaded in the O.A.

5. All the applicants in the OAs are relying on the aforementioned judgment of the Hon'ble High Court of Judicature at Madras dated 14.02.17, in Writ Petition No.33946/14 and connected cases. The applicants also submit that a similar view was also taken by the Hon'ble High Court of Delhi in LPA NO.405/2016 and connected cases in its judgment dated 01.09.16. The Hon'ble High Court of Madras in its judgment in W.P. No. 33946/2014 and connected cases has examined this issue and declared as follows in paragraphs 3 to 6:

*“3. All the applicants have a common grievance in the matter that they were not granted financial upgradation under the original Assured Career Progression Scheme, 1999 (herein after referred to as ACP Scheme), in the appropriate Grade Pay. The case of the applicants was that they were all working as Junior Engineers / Lower Division Clerks at the relevant point of time, without earning any promotion to the next higher grade. In terms of the ACP Scheme, many of them (in O.A.Nos.1170 of 2012 and 437 of 2013) had been granted the first financial upgradation, on*

*introduction in August, 1999, in the pay scale of Rs.6500 – 10500 (pre-revised). In terms of the ACP Scheme, many of them (in O.A.No.818 of 2011) had been granted the first financial upgradation, on introduction in August, 1999, in the pay scale of Rs.4000 – 6000 (pre-revised). Between January and April 2009, all the applicants had completed 24 years of service and hence, the applicants (in O.A.Nos.1170 of 2012 and 437 of 2013) are entitled to second financial upgradation under the erstwhile ACP scheme in the pay scale of Rs.10,000 – 325 - 15,200 in the corresponding pay band of Rs.15,600 – 39,100 with Grade Pay of Rs.6600/- and the applicants ((in O.A.No.818 of 2011) are entitled to second financial upgradation under the erstwhile ACP scheme in the pay scale of Rs.6000 – 8000, which has been merged with the scale of Rs.5500 – 9000, in the corresponding pay band of Rs.9,300 – 34,800 with Grade Pay of Rs.4200/-. When their claim for second financial upgradation was pending, the Government of India issued Modified Assured Career Progression Scheme (herein after referred to as MACP Scheme), vide Office Memorandum dated 19.05.2009, which envisaged grant of 3 financial upgradation to the Government employees, on completion of 10, 20 and 30 years of service. The scheme was brought into effect from 01.09.2008 superseding the earlier ACP scheme. The principal difference between both ACP and MACP scheme was that in ACP scheme upgradation is granted in the next higher pay scale as per hierarchy of line of promotion, whereas MACP is concerned, it would only be in the next higher Grade Pay, as prescribed. Although the MACP scheme was introduced vide Office Memorandum dated 19.05.2009, it was retrospectively implemented with effect from 01.09.2008.*

*4. The applicants having completed 24 years of service, between January and April 2009, they were hoping to be bestowed with the benefit of financial upgradation under the ACP Scheme, which was more advantageous to them, since the fixation is done in the next hierarchy of promotion and not in the next higher Grade Pay, as contemplated under the MACP scheme. In the circumstances, the applicants have submitted representations that they have to be given financial upgradation under the ACP scheme and which representations having been rejected, they approached the Tribunal praying for the relief as narrated above.*

5. *According to the applicants, on the day when they completed 24 years of service, MACP scheme was not introduced, and as the same was introduced only by Office Memorandum dated 19.05.2009, their claim would fall within the four corners of the benefits available under the erstwhile ACP scheme, and an accrued right which was otherwise available to the applicants under the erstwhile ACP scheme cannot be curtailed or altered or taken away by retrospective implementation of the MACP scheme, with effect from 01.09.2008. According to the applicants, that the MACP Scheme itself provides for retention of the then existing scheme for the purpose of grant of financial upgradation, if it was more advantageous to the employees concerned.”*

6. After examining the issue, the Hon’ble Madras High Court declared in Para 10 as follows:

*“Although it is a matter of record that MACP Scheme was introduced vide Memorandum dated 19.05.2009, but the same was put into effect from 01.09.2008. In the instant case, admittedly, before introduction of the MACP Scheme under the Office Memorandum dated 19.05.2009, the applicants have completed 24 years of service and their right to get second financial upgradation under the erstwhile ACP Scheme got crystallised and such right cannot sought to be negated by bringing in a new Scheme with retrospective effect. The purpose and spirit of the Career Progression Scheme is only for the benefit of employees, who face stagnation in their career. That purpose and spirit cannot be defeated, if the benefit under the new Scheme is causing detrimental to the interest of the employees. The intention between the Scheme would not be as such. In any event, as a principle of purposive interpretation, it has to be seen that what is more advantageous to the employees is what should be preferred, since the Scheme being a beneficial one, cannot be allowed to result in loss to the employees on its implementation. Therefore, in all fairness and fitness of things, till the introduction of MACP Scheme vide Office Memorandum dated 19.05.2009, the benefit which accrued to the employees under the erstwhile ACP Scheme ought to have been made available.”*

7. The Hon'ble High Court accordingly upheld the directions passed by the Central Administrative Tribunal, Chennai Bench in the impugned order and the writ petitions were dismissed.

8. Similarly, the Hon'ble High Court of Delhi in LPA No.405/2016 and LPA No.409/2016 decided on 01.09.16 considered the cases of some employees of Delhi Urban Shelter Improvement Board. In this connection, the Hon'ble Court after elaborately analysing both the ACP Scheme and the MACP Schemes, noted in Para 13 that:

*“There is a substantial difference between the ACP Scheme and the MACP Scheme which could adversely affect some employees. As per the ACP Scheme, the financial upgradation was equivalent to the pay-scale in the promotional post in the hierarchy whereas the MACP Scheme, on the other hand, states that financial benefit would be with reference to the hierarchy of grade pay as given in Section 1, Part-A of the 1st Schedule of the Rules 2008 i.e., CCS (Revised Pay) Rules 2008. Thus, MACP Scheme and the ACP Scheme differ in the manner and method of financial upgradation. It would not be correct to hold that the MACP Scheme is more advantageous and beneficial as compared to the ACP Scheme. In a given case MACP Scheme may not be as beneficial as ACP Scheme. The Nagpur Bench of the Bombay High Court in P.M. Wagh*

*(Supra) had noticed and observed that there was no challenge to the OM dated 19th May, 2009 and the only question raised related to the interpretation of paragraph/ clause 11 of the said memorandum.”*

9. Further in Para 15, it was noted by the Hon’ble Delhi High Court as follows:

*“The ACP Scheme was not withdrawn at any point of time till MACP Scheme was introduced by OM dated 19th May, 2009. The ACP Scheme, therefore, was as such operational till 18th May, 2009. The ACP Scheme and the MACP Scheme are both in the nature of delegated legislation. The Schemes are not formulated and enacted under the proviso to [Article 309](#) and [Clause 5 of Article 148](#) of the Constitution. As a rule, subordinate legislation could not have retrospective effect unless it is held that the said power has been granted under the legislation to the Executive. This is lacking and absent in the present case. We have not been shown any power and authority under which the said subordinate legislation could have been given retrospective effect. This would be one of the important factors and consideration to be kept in mind while interpreting clauses 9 and 11 of the OM dated 19th May, 2009”*

10. The Hon'ble Delhi High Court finally declared in Para 19 as follows;

*“In the present case we are concerned with whether or not financial upgradation as payable under the ACP Scheme between 1st September, 2008 and 19th May, 2009 granted under the ACP Scheme, can be withdrawn and taken away. This question had arisen as the grant of financial upgradation under the ACP Scheme was more beneficial to the employee. Dual benefit is not claimed. In such cases, we would hold that the benefit of financial upgradation under the ACP Scheme cannot be taken away. In this context, the paragraph / clause 11 stipulates that "past cases" would not be re-opened. Paragraph 9, on the other hand, deals with another set of cases where an employee finds it more beneficial to take advantage or benefit under the MACP Scheme, which is made applicable with retrospective effect from 1st September, 2008 by O.M. dated 19th May, 2009. It is in this context that the financial upgradation under the earlier ACP Scheme would be granted till 31st August, 2008. The idea behind paragraph / clause 9 is not to deny or withdraw higher or greater benefit which an employee may be entitled to under the MACP Scheme.”*

11. The applicants in both the O.As are relying on the above directions for the grant of reliefs sought. Per contra, respondents in the O.A/1001/18, through Mr.Rajesh Sukumaran K., ACGC, have submitted that the financial upgradation in accordance with the MACP Scheme for central employees which became operational with effect from 01.09.2008 has been extended to the applicant as well. As per the paragraph 9 of the O.M introducing the MACP Scheme, the financial upgradation as per ACP Scheme which was promulgated during 5<sup>th</sup> CPC which was granted till 31.08.2008, thereafter the MACP Scheme would be brought into effect. Thus, the contention of the applicant that he should be granted 2<sup>nd</sup> financial upgradation under the ACP Scheme with effect from 26.11.2008 is legally unsustainable. The MACP Scheme has been brought into effect from 01.09.2008 and it has been

implemented with respect to the applicant as it was extended to the employees similarly placed as him, granting him all financial upgradations as eligible under the Scheme. The respondents have only implemented the orders of the Govt. of India in letter and spirit and no powers are vested with the respondents to deviate from these orders of the Govt. of India, which are uniformly applicable to all. Further, the applicant's claim that he is entitled to the benefit as per the orders of the various Courts with regard to grant of MACP in the promotional hierarchy, is totally denied in the light of the fact that such orders are not final and these have been taken up in appeal before higher fora and are presently pending consideration of superior courts, including the Hon'ble Apex Court by way of numerous SLPs. In the light of the pendency of the appeals, the orders of the lower courts cannot be deemed to have become final.

12. In O.A/745/19, learned counsel for the respondents Mr.Ratish H., ACGSC, has filed a similar reply stating that the applicants were due for 2<sup>nd</sup> ACP during the period from October, 2008 to April, 2009; however they have been granted 2<sup>nd</sup> MACP in the GP Rs.4600/- in light of the Annexure A-2. The ACP Scheme envisages to financial upgradation in the higher scale of pay in the promotional hierarchy, whereas the MACP Scheme provides three financial upgradation after 10, 20 and 30 years of continuous service in the next higher Grade Pay. Since, the applicants completed 24 years of service between October, 2008 and April, 2009 they are only entitled for the benefits of the MACP Scheme with effect from 01.09.2008 as the ACP

Scheme was superseded by the MACP Scheme with effect from that date. The competent authority vide Annexure R-2 has also directed to review all cases settled between 01.09.2008 and 19.05.2009, if any, wherein the benefits of ACP Scheme has been granted to such individuals who have completed 24 years service during the period in question. In such circumstances, it is not feasible for the respondents to grant the benefit of the 2<sup>nd</sup> ACP claimed by the applicants.

13. In a rejoinder to the reply filed by the respondents in O.A/745/2019, the applicants have furnished at Annexure A-9, another judgment passed by the Hon'ble High Court of Karnataka at Bangalore which held that the order dated 19.05.2009 introducing the MACP Scheme could not have retrospective effect. The copy of the judgment of the Hon'ble High Court of Karnataka in W.P(C)No. 24894-24908/2016 (S-CAT) dated 05.06.2017 has been produced and it is the case of the applicants that since MACP Scheme has come into effect only by the order dated 19.05.2009, the same cannot have retrospective effect so as to take away the vested rights accrued to the applicants under the ACP Scheme. The judgment of the Hon'ble High Court of Karnataka has declared in Para 11 as follows:

*“It is a cardinal principle of law that benefits acquired under existing rules cannot be taken away by amending the Rules with retrospective effect. The retrospective date fixed under clause 9 of the MACP Scheme has no reasonable nexus with the object sought to be achieved by introducing a Modified Assured Progression Scheme. The MACP Scheme having been devised to off-set the opportunities of regular promotion to the employees, denial of the said benefit to a section of the employees who fall within the bracket is arbitrary and*

*unconstitutional being violative of Articles 14 and 16 of the Constitution of India.”*

As a result, the Hon’ble High Court declared in Para 14 as follows :

*“As the right of the petitioners to get second financial up-gradation under the erstwhile ACP Scheme had crystallized much before the introduction of MACP Scheme, the said right cannot be negated by retrospective operation of the MACP Scheme. On careful reading of O.M. dated 19.5.2009, we are of the considered view that the retrospective application of the MACP Scheme is detrimental to the rights of the petitioners and is discriminatory and therefore violative of Articles 14 and 16 of the Constitution of India. As a result, we hold that Para 9 of the O.M. dated 19.5.2009 (Annexure-A7) in so far as making the MACP Scheme applicable to the petitioners with retrospective effect from 1.9.2008 is bad in law. Consequently, the petitioners are entitled to be considered for grant of II-ACP in terms of the erstwhile ACP Scheme. To that extent, the impugned order passed by the Tribunal is liable to be set-aside.”*

14. We have gone through the above judgments and heard learned counsel for the applicant Mr.T.C.Govindaswamy as well as, the learned counsel for the respondents. Learned counsel for the applicant heavily relies on the above judgments of the High Courts of Madras, High Court of Delhi and High Court of Karnataka. He has also brought to our notice that the judgment of the Hon’ble High Court of Karnataka was later appealed to the Hon’ble Apex Court in Special Leave Petition No.29605 of 2017. On 27.02.2020, the Hon'ble Apex Court has passed orders finding no ground to interfere with the impugned order passed by the High Court and dismissed the SLP. However, it has been mentioned in the order that the question of law is kept open. In a written submission, counsel for the respondents in O.A/1001/2018, Mr.Rajesh Sukumaran, has submitted that Civil Appeal No.1625/21 - 1627/21 arising out of SLP No.10811/18 – 10813/2018 as

seen from the Supreme Court website, is still pending before the Hon'ble Supreme Court against Annexure A3 judgment of Madras High Court. Further, it is submitted that Annexure A-4 judgment is not applicable as there is a considerable difference in the factual matrix, as the applicant in that judgment of the Delhi High Court was granted financial upgradation under the ACP Scheme which was later withdrawn on implementation of the Annexure A-2 MACP Scheme. Hence the ratio of the Annexure A-4 judgment of the Delhi High Court is not applicable in the present O.A. It is argued with regard to the averments of the petitioner that whatever right to him may have accrued between 01.09.08 and 19.05.09, the same has been taken away by the DoP&T O.M of 19.05.09. The respondents are bound by the orders/circulars of the DoP&T which is the Nodal Department that formulates policies on service matters and issues instructions from time to time. These instructions have thus to be followed by all the ministries or departments of Central Government.

15. We have heard the arguments as well as perused the judgments provided by the counsel for the applicant and heard the counsels for the respondents. At present, in the absence of any further directions or orders from the Hon'ble Apex Court in the appeals pending before it, it appears to us that we have to be guided by the findings/observations of the Hon'ble High Courts of Madras, Delhi and Karnataka, which have all elaborately considered the above issue. These judgments concur that the benefits that have been accrued under the ACP Scheme cannot be negated by another

Scheme and the rights to the employees under the ACP Scheme have been crystallized. A new Scheme, which is introduced, cannot defeat the purpose of the earlier scheme which has given these rights. Further, the intention of the new Scheme cannot be to take away the benefit of the old Scheme. As observed by the Madras High Court as a principle of purposive interpretation, it has to be seen that what is more advantageous to the employees is what should be preferred. A new Scheme, which may be a beneficial one, cannot take away or result in loss to the employees on its implementation. The Hon'ble Karnataka High Court judgment has also made it clear that the implementation of the MACP Scheme cannot take away the legal right granted under the ACP Scheme, by retrospective operation of the MACP Scheme. The judgment has, in fact, even struck down this retrospective operation which has not been interfered with by the Hon'ble Apex Court though it has kept the question of law open. Thus, going by the findings and observations of these Courts and also that the Hon'ble Apex Court has found no ground to interfere with their orders, we too, in line with the above, allow grant of the relief to the applicants in the two O.As, as prayed for by them. The respondents are accordingly directed to take necessary steps in the matter. No orders as to costs.

(Dated this the 28<sup>th</sup> day of September 2021)

**K.V.EAPEN**  
**ADMINISTRATIVE MEMBER**

**P.MADHAVAN**  
**JUDICIAL MEMBER**

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**List of Annexures in O.A.No.180/00745/2019**

1. **Annexure A1** – A true copy of the DoPT Office Memorandum bearing No. 35034/1/98-Estt(D) 09.08.99.
2. **Annexure A2** – A true copy of DoPT Office Memorandum bearing No. 35034/3/2008-Estt(D) dated 19.05.2009.
3. **Annexure A3** – A true copy of recruitment rules relating to Civilian Gazetted Design Officers Cadre, published under SRO 246 dated 21.11.2002.
4. **Annexure A4** – A true copy of the enclosure to the order bearing No.EE/08/5023 dated 30.06.2014 issued from the office of the fourth respondent.
5. **Annexure A5** - A true copy of the Civilian Establishment List no. 09/2015 INFDT dated 19.08.2015 issued by the Civilian Establishment Officer.
6. **Annexure A6** – A true copy of judgment of the Hon'ble High Court of judicature at Madras in Writ Petition No.33946/14 and connected cases dated 14.02.2017.
7. **Annexure A7** – A true copy of judgment in LPA NO.405/2016 and connected cases dated 01 Sep 2016 rendered by the Hon'ble High Court of Delhi.
8. **Annexure A8 series** – True copies of representations addressed to the respondents submitted by the applicants.
9. **Annexure A9** – True copy of judgment dated 05.06.2017 in W.P.(C) No. 24894-24908-2016 (S-CAT) of the Hon'ble High Court of Karnataka.
10. **Annexure R1** – True copy of service particulars in respect of the applicants, Encl. To HQ SNC letter CS 2695/43/1858 28<sup>th</sup> January, 2020.
11. **Annexure R2** - True copy of Ministry of Defence ID No. 11(3)2009-D(Cic-I) 31<sup>st</sup> July 2012 along with FAQ.

**List of Annexures in O.A.No.180/01001/2018**

1. **Annexure A1** - A true copy of the DoPT Office Memorandum bearing No. 35034/1/97-Estt(D) 09.08.99.
2. **Annexure A2** - A true copy of DoPT Office Memorandum bearing No. 35034/3/2008-Estt(D) dated 19.05.2009.
3. **Annexure A3** - A true copy of judgment of the Hon'ble High Court of judicature at Madras in Writ Petition No.33946/14 and connected cases

dated 14.02.2017.

4. **Annexure A4** - A true copy of judgment in LPA NO.405/2016 and connected cases dated 01 Sep 2016 rendered by the Hon'ble High Court of Delhi.
  5. **Annexure A5** – A true copy of representation dated 31.10.2018, addressed to the 3<sup>rd</sup> respondent.
  6. **Annexure R1** - True copy of this Directorate's Office Order No: 23 (MACP) in F.No: 1(133)/2017(ACP/MACP) dated 05.03.20185.
  7. **Annexure R2** - True copy of the PPO dated 06.08.2018 issued in favour of the applicant granting him revised pension.
  8. **Annexure R3** - True copy of DoP&T's O.M. No: 22034/04/2013-Estt. (D) dated 17.05.2016.
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