

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.2005/2014
M.A.No.1723/2014
M.A.No.2629/2017

with

O.A.No.1945/2014
M.A.No.1682/2014
M.A.No.2950/2016

and

O.A.No.434/2016

Order Reserved on: 17.11.2017
Order pronounced on 01.12.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)

O.A.No.2005/2014

1. Satender Singh, Div.VI
S/o Sh. Tejpal
r/o 959/A, Gali No.10, I Block
Sangam Vihar, New Delhi – 62.

2. Rambir, Div.VII
S/o Sh. Het Ram, Aged about 52 years
R/o 959/A, Gali No.10, I Block
Sangam Vihar
New Delhi – 62.

3. Satbir, Div. III
S/o Sh. Mansa Ram
Aged about 54 years
R/o 959/A, Gali No.10, I Block
Sangam Vihar, New Delhi-62.

4. Harjesh Singh, Div.VI
S/o Sh. Rajpal Singh, aged about 58 years
R/o 959/A, Gali No.10, I Block
Sangam Vihar, New Delhi-62.
5. Ram Shankar, Div.VI
S/o Sh. Ram Lal, aged about 52 years
R/o 959/A, Gali No.10, I Block
Sangam Vihar, New Delhi-62.
6. Kailash Jain, Div.VI
S/o Sh. Bhajan Singh, aged about 52 years.
R/o 959/A, Gali No.10, I Block
Sangam Vihar, New Delhi-62.
7. Balbir, Div. VI
S/o Sh. Mangli Ram, aged about 55 years
R/o 959/A, Gali No.10, I Block
Sangam Vihar, New Delhi-62.
8. Shiv Prasad, Div.VI
S/o Sh. Jairam Yadav, Aged about 55 years
R/o 959/A, Gali No.10, I Block
Sangam Vihar, New Delhi-62.
9. Sanowar Kumar, Div. III
S/o Sh. Kishore Ram, Aged about 52 years
R/o 959/A, Gali No.10, I Block
Sangam Vihar, New Delhi-62.
10. Tiraspal, Div.III
S/o SH. Bhanwar Singh, aged about 51 years
R/o 959/A, Gali No.10, I Block
Sangam Vihar, New Delhi-62.
11. Ram Prasad, Div.III
S/o Sh. Chatur Paswan, aged about 52 years
R/o 959/A, Gali No.10, I Block
Sangam Vihar, New Delhi-62.

12. Vijay Pal, Div.III
 S/o SH. Chet Ram, aged about 50 years
 R/o 959/A, Gali No.10, I Block
 Sangam Vihar, New Delhi – 62.

13. Surender, Div.VI
 S/o Sh. Abhay Singh, aged about 60 years
 R/o 959/A, Gali No.10, I Block
 Sangam Vihar, New Delhi-62.

14. Dharambir Sharma, Div.VI
 S/o Sh. Pyare Lal, Aged about 52 years
 R/o 959/A, Gali No.10, I Block
 Sangam Vihar, New Delhi-62.

15. Janardhan, Aged about 56 years
 S/o Sh. Charitra Ram
 R/o 959/A, Gali No.10, I Block
 Sangam Vihar, New Delhi-62.

(All Malis in DDA) ... Applicants

(By Advocate: Ms. Kittoo Bajaj)

Versus

1. Delhi Development Authority
 Through Its Chairman
 I.N.A., New Delhi.
2. The Commissioner (Horticulture)
 Delhi Development Authority
 New Delhi.
3. The Commissioner (Personnel)
 Delhi Development Authority
 New Delhi.

... Respondents

(By Advocate: Ms. Sriparna Chatterjee)

with

O.A.No.1945/2014

1. Narender Kumar
S/o Sh. Rambir Singh, 51 years
R/o B-313, Gali No.9, Phase 10
Shiv Vihar, Delhi.
Posted as: Mali in
Horticulture Division-9, DDA
Vivek Vihar, Delhi.

2. Daya Ram
S/o Sh. Bholu Ram
R/o Village Ganauli, Loni
Ghaziabad.
Posted as: Mali in
Horticulture Division-9, DDA
Vivek Vihar, Delhi.

3. Sohan Lal, 51 years
S/o Sh. Raghuvir Singh,
R/o Village Khardi Distt. Bagpat (UP)
Posted as: Mali in
Horticulture Division-9, DDA
Vivek Vihar, Delhi.

4. Harish Chand, 53 years
S/o Sh. Inder Singh
R/o B-173, Gautam Budh Vihar
Gali No.4, Johripur
Delhi-94.
Posted as: Mali in
Horticulture Division-9, DDA
Vivek Vihar, Delhi.

5. Om Prakash, 53 years
S/o Sh. Hukum Singh
R/o Saboli Vistar, Gali No.10
H.No.173, Delhi – 110 094.
Posted as: Mali in

Horticulture Division-9, DDA
Vivek Vihar, Delhi.

6. Brahm Pal, 54 years
S/o Sh. Hardhan
R/o Village Gokulpuri
H.No.860, Gali No.3/24
Delhi – 110 044.
Posted as: Mali in
Horticulture Division-9, DDA
Vivek Vihar, Delhi.

7. Vijay Singh, 58 years
S/o SH. Reshal Singh
R/o Village & PO Lumb
Distt. Bagpat, (UP).
Posted as: Mali in
Horticulture Division-9, DDA
Vivek Vihar, Delhi.

8. Smt. Satto, 53 years
W/o Sh. Satpal,
R/o Village Berka Pasana
Distt. Gurgaon, Haryana
Posted as: Mali in
Horticulture Division-9, DDA
Vivek Vihar, Delhi.

9. Ram Mehar, 50 years
S/o Sh. Bhajan Lal
R/o E-235, Gali No.6,
Karawal Nagar, Delhi-94.
Posted as: Mali in
Horticulture Division-9, DDA
Vivek Vihar, Delhi.

10. Sheesh Pal Singh, 49 years
S/o Sh. Sher Singh
R/o House No.R-4/8, Dayalpur
Delhi – 110 094.

*Posted as: Mali in
Horticulture Division-9, DDA
Vivek Vihar, Delhi.*

11. Onkar, 50 years
S/o Sh. Pheru Singh
R/o House No.C-248, Prem Vihar
Delhi – 110 094.

*Posted as: Mali in
Horticulture Division-9, DDA
Vivek Vihar, Delhi.*

12. Ajab Singh, 49 years
S/o Sh. Dev Chand
R/o Village Chirori, PO Chirori
Distt. Ghaziabad (UP)
*Posted as: Mali in
Horticulture Division-9, DDA
Vivek Vihar, Delhi.*

13. Smt. Maltiya, 52 years
W/o Sh. Om Prakash,
R/o E-777, Mangol Puri
Delhi.
*Posted as: Coolie in
Horticulture Division-5, DDA
Rohini, Delhi.*

14. Smt. Uganti, 57 years
W/o Late Sh. Shambhu Dayal
R/o D-28, Nangloi Extn.II
Delhi.
*Posted as: Coolie in
Horticulture Division-5, DDA
Rohini, Delhi.*

15. Smt. Kamlesh, 55 years
W/o SH. Sukh Ram
R/o A-2/157D, Lawrence Road
Delhi

*Posted as: Coolie in
Horticulture Division-5, DDA
Rohini, Delhi.*

16. Smt. Sona, 54 years
W/o Sh. Sheesh Ram
R/o C-1/17, Lawrence Road
Delhi.

*Posted as: Coolie in
Horticulture Division-5, DDA
Rohini, Delhi.*

17. Trilok Chand, 53 years
S/o Sh. Hari Chand
R/o 127-A, Part-II
Pratap Vihar
Nangloi, Delhi.

*Posted as: Coolie in
Horticulture Division-5, DDA
Rohini, Delhi.*

18. Jai Kishan, 54 years
S/o Sh. Chander Bhan
R/o Village Raiya
Distt. Jhajjar, PO Hasanpur
Haryana.

*Posted as: Coolie in
Horticulture Division-5, DDA
Rohini, Delhi. Applicants*

(By Advocate: Sh. S.P.Mitra for Shri Malaya Chand)

Versus

The Vice Chairman
Delhi Development Authority
Vikas Sadan, I.N.A. Colony
New Delhi.

.... Respondent

(By Advocate: Shri S.M.Zulfiqar Alam)

O.A.No.434/2016

1. Baleshwar, Aged 53 years
S/o Sh. Mathan Singh
R/o Village & P.O.Jawli
Loni, Ghaziaad
Posted as: Mali in
Horticulture Division-9, DDA
Vivek Vihar, Delhi.

2. Brij Pal, Aged 53 years
S/o Sh. Sagar Singh
R/o E-348, Gali No.15, Khajuri Khas
Delhi – 110 094.
Posted as: Mali in
Horticulture Division-9, DDA
Vivek Vihar, Delhi.

3. Harpal, Aged 52 years
S/o SH. Shambhu
R/o Village Gaddi Sablu
P.O. Loni, Ghaziabad
Posted as: Mali in
Horticulture Division-9, DDA
Vivek Vihar, Delhi.

4. Rampat, Aged 57 years
S/o Sh. Hari Chand
R/o Village Aggrola PO
Loni, Ghaziabad
Posted as: Mali in
Horticulture Division-9, DDA
Vivek Vihar, Delhi.

5. Madan, Aged 53 years
S/o Late Sh. Raghbir
R/o Village Gaddi Sabtu PO
Loni, Ghaziabad.
Posted as: Mali in
Horticulture Division-9, DDA

Vivek Vihar, Delhi.

6. Kiran Pal, Aged 56 years
 S/o Sh. Sigan
 R/o Village & PO Gaddi
 Kalanjari Bist
 Bagpat (U.P.)
Posted as: Mali in
 Horticulture Division-9, DDA
 Vivek Vihar, Delhi.

7. Jagat Singh, Aged 53 years
 S/o Sh. Karam Singh
 R/o Village & PO Bhupkheri
 Loni, Ghaziabad.
Posted as: Mali in
 Horticulture Division-9, DDA
 Vivek Vihar, Delhi. Applicants

(By Advocate: Sh. S.P.Mitra for Shri Malaya Chand)

Versus

The Vice Chairman
 Delhi Development Authority
 Vikas Sadan, I.N.A. Colony
 New Delhi. Respondent

(By Advocate: Ms. Sriparna Chatterjee)

O R D E R (Common)

By V. Ajay Kumar, Member (J):

Since the questions of facts and law involved in these OAs, are identical, and as prayed by the learned counsel appearing in the OAs, they are being disposed of by this common order. For the sake of

convenience, the facts in OA No.2005/2014 are taken for consideration.

2. The applicants were appointed as Muster Roll Work Charged Beldars in the Horticulture Division of the respondent-Delhi Development Authority, w.e.f. 03.01.1982. Thereafter, they were appointed as regular Work Charged Malis w.e.f. 03.01.1985. The respondents granted the applicants the 1st Financial Upgradation under the Assured Career Progression Scheme dated 09.08.1999, w.e.f. 09.08.1999. Thereafter, the respondents, in 2010, have granted the 2nd Financial Upgradation under Modified Assured Career Progression Scheme (in short, MACP Scheme), w.e.f. 01.09.2008. When the respondents, in the year 2014, refixed the pay of the applicants, to their detriment, they filed the present OA, seeking the following relief(s):

A. Quash the order dated 24.01.14 and uphold grant of 2nd MACP to all the Applications as they have completed 20 years continuous qualifying service on 03.01.2005 for grant of 2nd MACP.

B. Direct the respondents to grant the benefit of 2nd ACP w.e.f. 03.01.2006 with scale of Rs.9300-34800-4600 to the Applicants.

C. Direct the Respondent to provide complete due and drawn statement to reflect the correct and exact amount of arrears payable to the Applicants towards ACP benefits, w.e.f. 03.01.2006 whilst giving them the benefit of interest @12% p.a., compounded monthly.

D. Any other order(s) the Hon'ble Court deems fit be also passed."

3. Heard Ms. Kittoo Bajaj, the learned counsel for the applicants in OA 2005/2014 and Shri Malaya Chand, the learned counsel for the applicants in OA 1945/2014 and OA 434/2016 and Ms. Sriparna

Chatterjee, and Shri S.M.Zulfiqar Alam, the learned counsel for the respondents, and perused the pleadings on record.

4. Smt. Kittoo Bajaj, the learned counsel for the applicants in OA No.2005/2014, and who lead the arguments in the batch of OAs, submitted that though various relief(s) have claimed in the OAs, with supporting submissions, but the applicants are restricting their prayer for granting of 2nd ACP benefit w.e.f. 03.01.2009, with consequential pay fixation and benefits, on which date, the applicants have completed 24 years of regular service as Work Charged Malis.

5. The learned counsel Ms. Kittoo Bajaj, submits that the Government of India introduced the Assured Career Progression Scheme (in short, ACP Scheme), vide OM dated 09.08.1999, which came into force on 09.08.1999, to remove stagnation. Subsequently, in supersession of ACP Scheme, the Government introduced MACP Scheme, vide OM dated 19.05.2009, which came into operation w.e.f. 01.09.2008. The applicants having appointed as regular Work Charged Malis w.e.f. 03.01.1985, were rightly granted with the 1st Financial Upgradation under the ACP Scheme, w.e.f. 03.01.1997, i.e., on completion of 12 years of regular service. However, though the applicants become entitled for granting of 2nd Financial Upgradation under the ACP Scheme, w.e.f. 03.01.2009, i.e., when they have completed the 24 years of service, the respondents have not granted the same to the applicants. However, under the MACP Scheme, the respondents granted the 2nd MACP benefits to the applicants.

6. The learned counsel for the applicants submits that the benefits contemplated under ACP Scheme were more beneficial to the employees than the benefits under the MACP Scheme. Hence, as the applicants have completed their 24 years of service on 03.01.2009, i.e., even prior to the issuance of the MACP Scheme, OM dated 19.05.2009, they were entitled for granting of the 2nd Financial Upgradation under ACP Scheme, even though the MACP Scheme was introduced with retrospective date, i.e., w.e.f. 01.09.2008. She placed reliance on the following decisions in support of her contentions:

- a) **Delhi Urban Shelter Improvement Board v. Shashi Malik & Ors.**, LPA No.405/2016, decided on 01.09.2016 by the Hon'ble High Court of Delhi.
- b) **Union of India & Others v. S. Ranjit Samuel & Others**, W.P.No.33946 of 2014 & batch, decided on 14.02.2017 by the Hon'ble High Court of Judicature at Madras.
- c) **Union of India & Anr. v. The Registrar, Central Administrative Tribunal, Madras Bench & Others**, WP No.26223/2015, decided on 20.03.2017 by the Hon'ble High Court of Madras.
- d) **Sri B D Kadam & Others v. Union of India & Others**, WP No.24894/2016 and batch, decided on 05.06.2017 by the Hon'ble High Court of Karnataka.

7. Ms. Sriparna Chatterjee, the learned counsel appearing for the respondent - DDA, would submit that once the MACP

Scheme became operational w.e.f. 01.09.2008, on which date the applicants were not qualified for granting of 2nd ACP benefits, as they have not completed the 24 years of service on the said date, the claim of the applicants for granting of 2nd ACP benefits w.e.f. 03.01.2009 does not arise at all, as the ACP Scheme was valid upto 31.08.2008 only. The learned counsel further submits that once the OM dated 19.05.2009 under which the MACP Scheme was introduced in supersession of ACP Scheme of 1999, wherein it was categorically stated that the Financial Upgradations as per the provisions of the earlier ACP Scheme would be granted till 31.08.2008 only, and without challenging the said provision of the MACP Scheme, the applicants cannot claim that their case for granting of 2nd Financial Upgradation benefits under ACP Scheme deserves to be considered w.e.f 03.01.2009. The learned counsel opposed the OAs on the ground of limitation also. The learned counsel for the respondents placed reliance on the following decisions in support of her submissions:

- a) **Akhilesh Singh & Ors. v. Delhi Development Authority & Ors.**, OA No.670/2015, decided on 16.12.2016 by a Division Bench of the Principal Bench of the Central Administrative Tribunal.
- b) **Union of India & Anr. v. P.M.Wagh & Anr.**, W.P.No.3722/2013, decided on 09.01.2015 by the Hon'ble High Court of Bombay at Nagpur Bench.
- c) **Naresh Kumar & Others v. Delhi Development Authority & Others**, OA No.1050/2014, decided on 24.11.2016 by a

Division Bench of the Central Administrative Tribunal, Principal Bench, New Delhi.

8. In short, the applicants contend that though the MACP Scheme was issued on 19.05.2009, with retrospective effect from 01.09.2008, their accrued right for granting the 2nd Financial Upgradation under the ACP Scheme, as they have completed the 24 years of service as on 03.01.2009, cannot be taken away.

9. Since the subject matter of the OAs is pertaining to granting/non-granting of a financial benefit and that the respondents refixed the pay of the applicants by issuing orders, the OAs are within the period of limitation. Hence, the contention of the respondents that the OAs are barred by limitation, is unacceptable.

10. For proper adjudication of the matter, it is necessary to examine the case laws relied upon by both sides.

11. In **Delhi Urban Shelter Improvement Board** (supra), the respondents who are employees of the appellant Board, questioned the Order dated 22.03.2012, by which the financial upgradations granted to them vide Order dated 31.03.2009, under the ACP Scheme, were sought to be withdrawn. A Division Bench of the Hon'ble High Court of Delhi while dismissing the LPAs of the Board, observed as under:

"8. The ACP Scheme was introduced pursuant to the recommendation of the 5th Pay Commission by O.M. 9th August, 1999 and was in the nature of executive instructions. The Scheme envisaged grant of financial upgradation in the next higher grade in accordance with the existing hierarchy in

the cadre/category without creating new posts, on completion of 12 and 24 years of regular service, subject to the condition that the concerned employee had not earned or was not granted promotion during this period.

9. Similarly, the MACP Scheme was introduced by way of executive instructions dated 19th May, 2009 pursuant to the recommendation of the 6 th Pay Commission. Pertinently, the MACP Scheme was not notified on the date when the Central Civil Services (Revised Pay) Rules 2008 ("2008 Rules" for short) were notified i.e. on 29th August, 2008. The 2008 Rules enacted under the proviso to Article 309 and Clause 5 of Article 148 of the Constitution, were given retrospective effect and made applicable from the 1 st day of January, 2006.

10. The OM dated 19th May 2009, in paragraph 3, stipulates that the scheme was in supersession of previous ACP Scheme and the clarifications issued under the ACP Scheme. Paragraph 9 of the O.M. had stated that the MACP Scheme would be operational with effect from 1 st September, 2008. Financial upgradation as per the provisions of the earlier ACP Scheme of August, 1999 would be granted up till 31st August, 2008. Per contra, paragraph 11 stated that no past cases would be re-opened. The aforesaid paragraph/clause in the MACP Scheme alludes and expounds that the financial upgradation or benefit granted to the respondents under the ACP Scheme cannot be withdrawn.

11. A conjoint and harmonious reading of paragraphs 9 and 11 of the OM dated 19th May, 2009, is required. One interpretation is that ACP Scheme was withdrawn and inapplicable after 31st August, 2008, even if it was actually operational till 18th May, 2009. Therefore, the expression "past cases" in clause 11 of the OM dated 19th May, 2009 refers to cases wherein benefits were granted under the ACP Scheme on or before 31st August, 2008 and no benefit or financial upgradation could have been granted under the ACP Scheme on or after 1 st September, 2008. As sequitor, it follows that if financial benefits, if any, were granted under the ACP Scheme between 1 st September, 2008 and 18th May, 2009, these should be withdrawn. The second plausible interpretation of the two paragraphs could be that the MACP Scheme was made retrospectively applicable with effect from 1 st September, 2008 for it postulates grant of financial upgradation on completion of 10/ 20/ 30 years of service instead of 12 and 24 years of continuous service under the ACP Scheme. The intent and object being that the Government employees who had completed 10 /20/ 30 years of service instead of the earlier requirement of 12 and 24 years of service would be granted benefit under the MACP Scheme. The retrospective effect was to confer this benefit on employees from a back date, and not to withdraw or take away a benefit conferred on an employee under the ACP scheme till the MACP scheme was notified on 19th May, 2009.

12. For the reasons set out below, we would prefer the second interpretation."

12. In **The Registrar, Central Administrative Tribunal** (supra), following **Delhi Urban Shelter Improvement Board** (supra), the Hon'ble High Court of Madras dismissed the Writ Petition filed by the

Union of India against the Judgement of the Chennai Bench of this Tribunal wherein the orders recalling the granting of the 2nd ACP after introduction of MACP Scheme were quashed.

13. In **B. D. Kadam** (supra), all the Petitioners were eligible for grant of 2nd ACP on completion of 24 years of service, but before consideration of their cases for granting of the said benefit, MACP Scheme was introduced on 19.05.2009 and the same was made operational w.e.f. 01.09.2008. As all the petitioners had completed the 24 years of service during the interregnum period, i.e., between 31.08.2008 and 19.05.2009, the petitioners challenged the MACP Scheme so far as giving retrospective effect to the same. A Division Bench of the Hon'ble High Court of Karnataka while allowing the Writ Petitions, observed as under:

"8. We do not find anything either in para 6 of O.M. dated 19.5.2009 or para 6.2 of O.M. dated 9.8.1999 which supports the reasoning of the Tribunal that on account of extending the benefit of revised pay scales to the employees who had completed 24 years of service between 1.1.2006 and 31.8.2008, the Government had decided to deny them the benefit of the financial upgradation. Therefore, on the face of it, the impugned order cannot be sustained.

9. Secondly, we do not find any justification in the impugned order for the Tribunal to hold that the revision of pay scales disentitles the petitioners herein to the benefit of the II- ACP to which they were otherwise entitled to in terms of the erstwhile ACP Scheme. In our opinion, the revision of pay scales cannot take away the right of the petitioners for grant of financial upgradation. Undisputedly, revised pay scales were made applicable to all the employees in all the cadres irrespective of their stagnation or promotion. It is not the case of the respondents that the employees who were granted the benefit of the II-ACP between 1.1.2006 and 31.8.2008 did not avail the benefit of revision of the pay scales. The revision of pay scale was brought into effect on 1.1.2006. When the employees who had completed 24 years of continuous service during the period from 1.1.2006 to 31.8.2008 were granted the II-ACP in accordance with the terms of the erstwhile ACP Scheme, there was no reason for the respondents to deny the said benefit to the petitioners by declaring the MACP Scheme effective from retrospective date. Even otherwise, we do not find any logic in the reasoning of the Tribunal that since the benefit of revision

of pay was extended to the employees retrospectively, the respondents were justified in making the MACP Scheme operational from retrospective date.

10. In our view, the revision of pay of the employees has no nexus whatsoever with the grant of financial upgradation to the petitioners in accordance with the Scheme formulated by the Government. Since the pay structure has been changed uniformly to all the employees with effect from 1.1.2006, it goes without saying that the employees who are eligible for the financial upgradation under the erstwhile ACP Scheme are entitled for the said benefit in the new pay structure. Since all the petitioners in the instant case have completed 24 years of continuous service much prior to the introduction of MACP Scheme, in the ordinary course, the Screening Committee ought to have considered the case of the petitioners for grant of second financial upgradation under the ACP Scheme. If for any reason the Screening Committee has delayed in granting the benefit of second financial upgradation to the petitioners, the petitioners cannot be penalized for the laxity or inaction of the Screening Committee. The right of the petitioners for the II-ACP having been crystallized much before the introduction of the MACP Scheme, the said benefit cannot be taken away by retrospective application of the MACP Scheme.

11. 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.

12. It is also important to note that the retrospective application of the MACP Scheme has the effect of adversely affecting the conditions of service of the petitioners in as much as the petitioners who have already completed 24 years in the same cadre are required to wait for another term of ten years to get the second financial upgradation, whereas the similarly placed employees who have availed the ACP just on the eve of the cut-off date would be entitled for III-ACP Scheme much earlier than the petitioners. Given the age of the petitioners, even the possibility of getting the second financial up-gradation by the petitioners is remote as in all likelihood most of the petitioners would retire before completing the term of ten years prescribed under MACP Scheme. This is an invidious discrimination and has the effect of unreasonably restricting the conditions of service of the petitioners in violation of [Article 311](#) of the Constitution of India.

13. The Tribunal has failed to advert its mind to the above facts and has proceeded to uphold the notification solely on the ground that the petitioners have availed the benefits of revised pay bands and grade pay with effect from 1.9.2008. The revised pay bands and grade pay having been availed even by the other employees who have been granted the ACP Scheme subsequent to 1.1.2006, there is absolutely no reason to deny the said benefits to the petitioners on the purported ground. Therefore, viewed from any angle, we do not find any justifiable reason to uphold the impugned order.

14. As the right of the petitioners to get second financial upgradation 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.

Accordingly, we pass the following:-

ORDER

- (i) Writ petitions are allowed.
- (ii) It is held 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.
- (iii) Consequently, the common order dated 10.3.2016 passed by the Central Administrative Tribunal, Bengaluru Bench, Bengaluru in O.A.Nos.1086-1091 of 2014 and 897-905 of 2015 in so far as making the MACP Scheme applicable to the petitioners with retrospective effect from 1.9.2008 is set-aside.
- (iv) Petitioners are entitled for consideration of grant of II-ACP benefits in terms of the erstwhile ACP Scheme. (O.M. dated 9.8.1999)
- (v) Respondents are directed to place the representations of the petitioners before the Screening Committee for consideration of grant of second financial upgradation to the petitioners as per the ACP Scheme (O.M. dated 9.8.1999)."

14. In **S. Ranjit Samuel** (supra), while dismissing the Writ Petitions, filed by the Union of India, a Division Bench of the Hon'ble High Court of Madras, observed as under:

"10. 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 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."

15. In **Naresh Kumar** (supra) and **Akshilesh Singh** (supra), the issues were granting of a particular Grade Pay while granting benefits under MACP Scheme. Hence, the said decisions have no application.

16. In **P.M.Wagh** (supra), he was granted the 1st Financial Upgradation under ACP Scheme w.e.f. 09.08.1999 on which date he completed 12 years of service and was granted with the 2nd Financial Upgradation under the ACP Scheme on 12.11.2008, i.e., on completion of 24 years of service. The said 2nd Financial Upgradation under ACP Scheme was granted after the MACP Scheme came into force, i.e., 01.09.2008. When the respondents recalled the 2nd ACP benefit, he filed an OA and the same was allowed. Against the said decision, the Union of India filed the said Writ Petition. A Division Bench of the Hon'ble High Court of Bombay at Nagpur, while allowing the Writ Petition filed by the Union of India, observed as under:

"18] In our considered opinion, we are unable to subscribe to the view as taken and the reasons articulated. On behalf of the petitioners, it is submitted that the old ACP Scheme was implemented as proposed by the 5th Pay Commission ('5th CPC' for short) while the MACP was introduced as a consequence of the recommendations of the 6th Pay Commission ('6th CPC' for short). It is submitted that although the revised pay structure as per 6th CPC was implemented w.e.f. 1.1.2006, the MACP was made applicable w.e.f. 1.9.2008. Thus, the past cases would refer to such of the employees in respect of whom benefits under the ACP were granted between 1.1.2006 to 31.8.2008. The protection against reopening was for the benefits granted during this period. We find that this interpretation as has been clarified by the Department of Personnel and Training is in consonance with the

overall reading of the office memorandum dated 19.5.2009. The reasoning that the 'past cases' prior to 31.8.2008 have nothing to do with the MACP (as they were even otherwise to be covered by the ACP Scheme only) in our considered opinion, cannot be accepted. In our view, paragraph no.11 read with paragraph no.9 of the office memorandum would clearly show that the term 'past cases' would not mean, cases in which the benefits of ACP are granted for the period from 1.1.2006 to 31.8.2008. We also find that if the interpretation as placed in the impugned judgment is accepted, that would either result into there being overlapping of the provisions of the ACP/MACP during the said period or it would amount to rewriting of the MACP Scheme (inasmuch as it would result into MACP being applicable only from 19.5.2009 and not retrospective). None of the same would be permissible."

17. As observed above, the Division Benches of the Hon'ble High Courts of Delhi, Madras and Karnataka have opined that the benefits conferred/granted/accrued on the employees under the ACP Scheme before the date of issuance of the OM of MACP Scheme, cannot be denied/taken away/recalled on the ground that the MACP Scheme was given effect to retrospectively. On the other hand, a Division Bench of the Hon'ble High Court of Bombay in **P. M. Wagh** (supra), held that the provisions of the ACP Scheme cannot be operational after 31.08.2008. Both the views were expressed after considering and interpreting the paragraphs 11 and 9 of the MACP Scheme, itself.

18. It is the settled principle of law that if two different Division Benches of two different High Courts expresses contradicting views, the view expressed by the jurisdictional High Court is binding on this Bench of this Tribunal. The Jurisdictional High Court, i.e., the Hon'ble High Court of Delhi, and the Hon'ble High Courts of Madras and Karnataka held in favour of the applicants, whereas the Hon'ble High Court of Bombay held against the applicants. Since we are also agreeing with the views expressed by the Hon'ble High Courts of Delhi,

Karnataka and Madras, we are of the considered view that the instant OAs are deserves to be allowed, however, subject to the SLPs, if any, filed against the said decisions.

19. In the circumstances and for the aforesaid reasons, the OAs are allowed and the respondents are directed to consider the cases of the applicants for granting of the Financial Upgradations under the ACP Scheme till 19.05.2009, i.e., the date of issuance of the MACP Scheme OM dated 19.05.2009, if they are otherwise qualified and eligible, and to grant appropriate pay scales accordingly, with all consequential benefits. However, the applicants are not entitled for any arrears in the circumstances of these cases.

20. Further, it is made clear that we have not expressed any view on the dates of initial appointment of the applicants for reckoning the period for the purpose of granting Financial Upgradations under the ACP Scheme/MACP Scheme. Pending MAs, if any, stand disposed of.

21. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

/nsnrvak/