

**Central Administrative Tribunal
Principal Bench**

OA No.3204/2011

Reserved on : 08.10.2015

Pronounced on : 26.10.2015

**Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Mr. P. K. Basu, Member (A)**

1. Sh. Madhu Sudan
R/o B-52, Sarada Pur,
Near Ramesh Nagar,
New Delhi 110 015.
2. Sh. Surender Kumar
R/o 923/17, Lodhi Colony,
New Delhi 110 003.
3. Sh. Rajender Kumar Lookhar
R/o B-11, Officer's Colony,
Central Jail, Tihar,
New Delhi 110 064.
4. Smt. Kanta Devi
R/o INZ-228/14A/5,
Sadh Nagar, Palam Colony,
New Delhi 110 045.
5. Sh. Dharambir Singh
R/o 25 G, Sector-IV,
Pushp Vihar,
New Delhi-17.
6. Sh. Nageshwar Mahato
R/o 18-R, Sector-4, DIZ Area,
Gole Market, Raja Bazar,
New Delhi 110 001.
7. Smt. Rina Ayan,
R/o H. No.WZ-7A Gali No.7A,
Puran Nagar, Palam Colony,
New Delhi 110 043.
8. Sh. Shiv Sharma
R/o 15-C, Sector-4, DIZ Area,
Gole Market, Raja Bazar,
New Delhi 110 001.
9. Smt. Ashok Kumari
R/o 305, Kotla Village,

Mayur Vihar, New Delhi 110 091.

10. Smt. Usha Chauhan
M-323, Sarojini Nagar,
New Delhi 110 023.
11. Smt. Maya Rani Riola
R/o 10A/69, WEA, Karol Bagh,
New Delhi 110 005.
12. Smt. K. K. Lakshmi
BD-835, Sarojini Nagar,
New Delhi 110 023.
13. Smt. Sushma Rally,
R/o B-76, Kidwai Nagar,
New Delhi 110 023.
14. Smt. S. K. Bedi
R/o G-91, Sarojini Nagar,
New Delhi 110 023.
15. Smt. Sudha
R/o 1053, Block-28,
Baba Khadak Singh Marg,
New Delhi.
16. Sh. Pradeep Kumar
R/o 4-256, Sarojini Nagar,
New Delhi 110 023.
17. Sh. Pramod Kumar
R/o L-133, Sarojini Nagar,
New Delhi 110 023.
18. Smt. Labanya Shekhawat
R/o SITE-3, Flat No.63,
Vikas Puri,
New Delhi 110 018.
19. Smt. Neelam Dureja
R/o A-2/148, Sector-8,
Rohini, New Delhi.
20. Smt. Sneh Sehgal,
R/o J-3/77B, Rajouri Garden,
New Delhi.
21. Smt. Madhu Arora
R/o 161, Sant Nagar,
East of Kailash,

New Delhi.

22. Smt. Sunita Rajput
R/o M-173, Laxmi Nagar,
Delhi 110 092.
23. Smt. Indra Dadwal
R/o 1578 B, Rani Bagh,
New Delhi.
24. Smt. D. Gill
R/o 924, Block-19,
BKS Marg,
New Delhi.
25. Smt. Savita Sharma
R/o 23/77B, Tilak Nagar,
New Delhi 110 018.
26. Smt. Kalpana Sharma
R/o 20/29, Lodhi Colony,
New Delhi 110 003.
27. Sh. Ram Mohan
R/o B-52, Sharda Puri,
Ramesh Nagar,
New Delhi 110 015.
28. Sh. Kamal Kumar
R/o C-3/278, Lodhi Colony,
New Delhi 110 003.
29. Smt. Madhubala Sahi,
R/o D-14/17, Sector-8,
Rohini, New Delhi.
30. Smt. Sonia Girdhar
R/o 5-8, Ajay Enclave,
New Delhi.
31. Smt. Shobha Sharma
R/o 1770, Sector-37,
Arun Vihar,
NOIDA, UP.
32. Smt. Anjana Grover
R/o Ashok Nagar,
New Delhi 110 018.
33. Smt. Sunita Kakaria
R/o 8/14, Ashok Nagar,

New Delhi 110 018.

34. Smt. Kanwal Jeet Kaur
R/o DB 57 E, LIG Flat,
Hari Nagar, New Delhi.

35. Smt. Surjeet Jacob
R/o 10/14, Nehru Enclave,
Kalkaji, New Delhi.

36. Mrs. Meera Tiwari
R/o L-2/2A, Kalkaji, DDA Flats,
New Delhi. Applicants.

(By Advocate : Shri M. K. Bhardwaj)

Vs.

Union of India and Others

1. Govt. of India
Defence Secretary
Ministry of Defence
South Block,
New Delhi 110 011.

2. The Chief of Army Staff
South Block,
New Delhi 110 011.

3. The DG Signals,
'A' Wing, Sena Bhawan,
New Delhi 110 011. Respondents.

(By Advocate : Shri Rajesh Katyal)

: O R D E R :

P. K. Basu, Member (A) :

The applicants are working as Civilian Switch Board Operators (CSBO for short) Grade-I and II with the respondents. They joined services between the years 1976 to 1983. They claim 3rd financial upgradation under the MACP Scheme in the grade pay of `4200/-, `4600/- and `4800/-.

2. The applicants were beneficiaries under the Time Bound Promotion Scheme after 16 years and 26 years and drew benefits under that. The CSBOs were granted benefits of time bound promotion scheme pursuant to the implementation of CAT, Chandigarh Bench's Order in OA No.459/HR/2002 dated 13.09.2002 in the matter of **Shri Balraj Singh vs. Union of India & ors.**, after the CWP/SLP filed by the Union of India was dismissed by the Hon'ble High Court and Apex Court. As a consequence thereto, the ACP Scheme introduced vide order dated 09.08.1999 was withdrawn insofar as CSBOs were concerned and benefits of time bound promotion scheme as per Tribunal's order were implemented.

3. The applicants explain that the hierarchy of pay scales in the CSBOs cadre under the one time bound promotion scheme is as follows:-

- “(a) CSBO Gde II `3200-4900
- (b) CSBO Gde I `5000-8000
- (c) Tele/SB Supvr `5500-9000
- (d) After completion of `5000-8000
 16 years service
- (e) After completion of `5500-9000
 26 years service.”

It is stated that the applicants were granted time bound promotions in the pay scales of `5000-8000 and `5500-9000. It is further stated that in the year 2008, 6th Central Pay Commission gave its recommendations and one of the recommendations was merger of pay scales of `5000-8000, 5500-90000 and 6500-10500 and all

these scales got merged in one pay grade PB-2 in the grade pay of Rs.4200. As a result of the aforesaid merger, the effect of financial upgradation given under one time bound promotion scheme became ineffective and the Government of India issued clarifications/instructions, which *inter alia* stated that the employees who have been granted financial upgradation under the ACP Scheme/one time bound promotion scheme in the erstwhile scale of `5000-8000 and `5500-9000 have been made eligible to get the next higher grade pay. Therefore, in the case of the applicants who had been granted financial upgradation in the pay scale of `5000-8000 and `5500-9000 which got merged and were granted the grade pay of `4200/-, were required to be given the grade pay of `4600 under the 2nd financial upgradation and grade pay of `4800 as the 3rd financial upgradation.

4. It is clarified here by learned counsel for the applicants that the upgraded scales would be the same whether it is under time bound promotion scheme or MACP scheme because even under the MACP Scheme it would be in the next higher pay scale which would be `5000-8000 and `5500-9000. Therefore, there is no difference between the benefits under either of the schemes, only advantage of one time bound promotion scheme being that the movement from one level of responsibility to a supervisory level of responsibility, whereas under the MACP Scheme the nature of duties do not change, it is just that the employees get a higher pay scale.

5. The applicants preferred representations before the respondents and final order dated 29.06.2011 was issued rejecting

their claim. The relevant portion of the order is quoted below for easy reference:-

“2. The issue has been examined. It is intimated that the CSBOs were granted Time Bound Promotion Scheme pursuant to implementation of Court Order in OA No.450/HR/2002 dated 13 Sep 2002- Shri Balraj Singh Vs. Union of India & Others consequent to dismissal of CWP 8759 by High Court of Punjab & Haryana and dismissal of SLP No.CC.143/2004 filed by Union of India by Hon’ble Supreme Court. Consequent to implementation of the Court order, ACP Scheme introduced vide GOI letter No.3504/1/97-Estt.(D) dated 09 Aug 1999 was withdrawn in so far as CSBOs under General Staff Branch common roster are concerned and benefits of Time Bound Promotion Scheme as per Court was implemented.

3. As regards revision of Grade Pay from Rs.4200/- to Rs.4600/- in existing Pay Band in respect of CSBOs on their promotion from CSBOs Gde-1 to Tel (SB) Supervisor or on second financial upgradation under Time Bound Promotion Scheme after completion of 26 years of service, a case was taken up with Min of Defence but the proposal was not agreed to.”

Being aggrieved with this order, the instant OA has been filed with the following prayers:-

“(i) To quash and set aside the impugned order dated 29.06.2011 and direct the respondents to grant three financial upgradation to the applicants in the Grade Pay of `4200, 4600 & 4800 under TBPS from due date with all arrears of pay including interest at the rate of 12%.

(ii) To direct the respondents to grant three financial upgradations to the applicants on completion of 10 to 30 years of regular service.

(iii) To allow the OA with costs.

(iv) Any other relief which the Hon’ble Tribunal deem fit and proper may also be granted to the applicants.”

6. Learned counsel for the applicants further pointed out that in the MACP Guidelines itself (para 5 of Annexure A-1) Illustration has been provided, which reads as under:-

“Illustration-I

The pre-revised hierarchy (in ascending order) in a particular organization was as under:-

5,000-8000, 5,500-9,000 and 6,500-10,500

- (a) A Government servant who was recruited in the hierarchy in the pre-revised pay scale 5,000-8,000 and who did not get a pro-motion even after 25 years of service prior to 1-1-2006, in his case as on 1-1-2006, he would have got two financial upgradations under ACP to the next grades in the hierarchy of his organization, i.e., to the pre-revised scales of 5,500-9,000 and 6,500-10,500.
- (b) Another Government servant recruited in the same hierarchy in the pre-revised scale of `5,000-8,000 has also completed about 25 years of service, but he got two promotions to the next higher grades of `5,500-9,000 and `6,500-10,500 during this period.

In the case of both (a) and (b) above, the promotions/financial upgradations granted under ACP to the pre-revised scales of `5,000-9,000 and `6,500-10,500 prior to 1-1-2006 will be ignored on account of merger of the pre-revised scales of `5,000-8,000, `5,500-9,000 and `6,500-10,500 recommended by the Sixth CPC. As per CCS (RP) Rules, both of them will be granted grade pay of `4,200 in the pay band PB-2. After the implementation of MACPs, two financial upgradations will be granted both in the case of (a) and (b) above to the next higher grade pays of `4,600 and `4,800 in the pay band PB-2.”

Based on the above, the applicants state that they should also be granted the higher pay scale of `4600 and `4800/-. It is further pointed out that the DoP&T vide OM dated 30.07.2010, referred to para 13 of Annexure A-1 of the MACP Scheme regarding Staff Car Drivers and communicated the following decision of the Government, which is as follows:-

“2. In pursuance of the decision taken in the meeting of the Departmental Council (JCM) of Department of Personnel & Training held on 8-5-2010 in respect of Agenda Item No.57.31, it has been decided in consultation with the Department of Expenditure, the benefits of the MACPs shall also be extended to the regular Staff Car Drivers of the Central Government Ministries/Departments/Offices, as a fall back option, if

they are unable to get promotion within the percentage based present system.

3. Para 13 of the Annexure-I of the MACPS accordingly stands modified to this effect. In other words, the Staff Car Driver Scheme and the MACPs shall run concurrently.

In this regard, para 13 is quoted below for easy reference :-

“13. Existing time-bound promotion scheme, including in-situ promotion scheme, Staff Car Driver Scheme or any other kind of promotion scheme existing for a particular category of employees in a Ministry/Department or its offices, may continue to be operational for the concerned category of employees if it is decided by the concerned administrative authorities to retain such Schemes, after necessary consultation or they may switch over to the MACPS. However, these Schemes shall not run concurrently with the MACPS.”

It is, therefore, argued on the basis of the above that in the case of Staff Car Drivers both the schemes have been made to run concurrently and there is no reason as to why in the case of the applicants the same principle should not apply.

7. It is further argued that para 13 quoted of the guidelines clearly stipulate that in case the administrative authority decided to continue with the time bound promotion scheme, they could take a decision to do so and after necessary consultation or could have made a switch over to MACPS. It is argued that no such decision was specifically taken by the administrative ministry nor any consultation was held.

8. In reply, the respondents stated that as per Court’s directions, the respondents had made the time bound promotion scheme applicable to CSBO and withdrew the ACP Scheme and since the ACP scheme was not applicable, the MACP Scheme (which came to replace the erstwhile ACP Scheme) has not been

made applicable to the applicants. He further stated that in CSBO, promotion was granted and the corresponding financial upgradation accrued to the higher post. In the MACP Scheme, only financial upgradation is admissible. Therefore, the applicants cannot be granted the MACP benefits as there cannot be any switch over from a promotional scheme to financial upgradation scheme. Further the respondents rely on para 13 of Annexure A-1 of OM dated 19th May, 2009 on MACPs which clearly rules out both the schemes running concurrently.

9. Our attention has been drawn to the order passed by the Mumbai Bench of this Tribunal in OA No.589/2012 wherein the Tribunal addressed the same issue of applicability of MACP Scheme vis a vis time bound scheme and the said Application was disposed of with the direction to the respondents to reconsider the prayer of the applicants in the matter of policy of extending parity of MACP Scheme to Signal Wing Employees of the Ministry of Defence also at par with the employees of the post of Department of Posts when the latter had already been brought under the ambit of the MACP Scheme. In para 3 of that order, it has been noted that the Department of Posts had adopted the MACP Scheme and had given up the erstwhile CSBO scheme altogether. The respondents stated that after the order of the CAT, Mumbai Bench, the respondents have issued an order dated 23.02.2015 rejecting the applicants' plea primarily on the ground that both the MACP and time bound promotion scheme cannot run concurrently. A similar order dated 08.04.2015 was issued in compliance to another OA No.172/2013 of CAT Bangalore Bench.

10. In the above background, the respondents' case is that the applicants' claim for benefit of MACP is not justifiable and, therefore, the OA should be dismissed.

11. We have heard learned counsel for the parties and also perused the relevant provisions, rules and judgments placed before us.

12. The grounds for rejection of the applicants' claim clearly is the provisions of para 13 of the MACP Scheme which states that time bound promotion scheme and MACP Scheme cannot run concurrently. However, we find that in the case of Drivers, the Government themselves have allowed the concurrent application of both the time bound scheme and the MACP Scheme. Moreover, it would be clear from the order of the CAT Mumbai Bench that the Department of Posts have adopted the MACP Scheme. Therefore, we are of the view that the respondents now cannot take the stand that as per para 13 of the Guidelines, MACP and time bound promotion scheme cannot run concurrently or having adopted the time bound scheme it cannot be jettisoned for adopting the MACP Scheme in light of the OM dated 19.05.2009 regarding Drivers and the Department of Posts to give up the CSBO scheme altogether and adopting the MACP Scheme, as this would clearly be discrimination. Moreover, the government introduced the scheme for the benefit of employees and therefore, choice should have been left to the employees at the time MACP Scheme was introduced whether or not they would like to continue with the old scheme or adopt the new scheme. Having not done so, the respondents

cannot discriminate between different employees as regards these benefits. We, therefore, see merit in the OA and the same is, therefore, allowed. The respondents are directed to grant financial upgradation to the applicants under MACPs in the grade pay of `4200, 4600 and 4800 on completion of 10, 20 and 30 years of regular service under the MACP Scheme. No costs.

(P. K. Basu)
Member (A)

/pj/

(Syed Rafat Alam)
Chairman