

OAs.No.170/00326,00338,00339 & 00347/2017/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATIONS NO. 170/00326, 00338, 00339 & 00347/2017

DATED THIS THE 15th DAY OF FEBRUARY, 2018

HON'BLE DR.K.B. SURESH, MEMBER (J)
HON'BLE SHRI P. K. PRADHAN, MEMBER (A)

(In OA.No.170/00326/2017)

Sri P.S. Srinivasa Shetty
S/o Late P. Subbaih Shetty
Aged about 55 years
Senior Project Assistant
Office of the ISRO Satellite Centre Bangalore
R/at No. C2-153, DOS Housing Colony
Jeevan Bhima Nagar
Bangaluru 560 075.

... Applicant

(By Advocate Shri Yogesh L.Hiremath)

Vs.

1. Union of India
Represented by its Director
ISRO Satellite Centre
Department of Space
Government of India
Airport Road
Bangalore-560017.
2. The Secretary
Department of Space
Bangalore-560017.
3. Union of India
Represented by its Secretary
Ministry of Finance
Department of Expenditure
New Delhi-110001.
4. Secretary
Department of Personnel and Training
New Delhi-110001.

...Respondents

(By Advocate Shri J.Bhaskar Reddy)

(In OA.No.170/00338/2017)

Sri S. Ravindra
S/o Late M. Shankrappa
Aged about 57 years
Senior Project Assistant
Office of the ISRO Satellite Centre, Bangalore
R/at No. D-2, DOS Housing Colony
Indira Nagar (Opp – ESI Hospital)
Bangaluru 560 008.

... Applicant

(By Advocate Shri Yogesh L.Hiremath)

Vs.

1. Union of India
Represented by its Director
ISRO Satellite Centre
Department of Space
Government of India
Airport Road
Bangalore-560017.
2. The Secretary
Department of Space
Bangalore-560017.
3. Union of India
Represented by its Secretary
Ministry of Finance
Department of Expenditure
New Delhi-110001.
4. Secretary
Department of Personnel and Training
New Delhi-110001.

...Respondents

(By Advocate Shri S.Prakash Shetty)

(In OA.No.170/00339/2017)

Sri T Venugopal
S/o Late C Thimmaiah
Aged about 58 years
Senior Project Assistant
Office of the ISRO Satellite Centre, Bangalore
R/at No. C-21, DOS Housing Colony
New Land Domlur, 2nd Stage, 8th Main
Bangaluru – 560 071.

... Applicant

(By Advocate Shri Yogesh L.Hiremath)

Vs.

1. Union of India

OAs.No.170/00326,00338,00339 & 00347/2017/CAT/Bangalore Bench

Represented by its Director
ISRO Satellite Centre
Department of Space
Government of India
Airport Road
Bangalore-560017.

2. The Secretary
Department of Space
Bangalore-560017.
3. Union of India
Represented by its Secretary
Ministry of Finance
Department of Expenditure
New Delhi-110001.
4. Secretary
Department of Personnel and Training
New Delhi-110001.

...Respondents

(By Advocate Shri S.Prakash Shetty)

(In OA.No.170/00347/2017)

Sri G.Rajagopalachar
S/o Late H.Gurumurthachar
Aged about 57 years
Senior Project Assistant
Office of the ISRO Satellite Centre Bangalore
R/at No.7/7, (2) Behind Vetarinary Dispensary
Chikakbanavara
Bangaluru 560 090.

... Applicant

(By Advocate Shri Yogesh L.Hiremath)

Vs.

1. Union of India
Represented by its Director
ISRO Satellite Centre
Department of Space
Government of India
Airport Road
Bangalore-560017.

2. The Secretary
Department of Space
Bangalore-560017.

3. Union of India
Represented by its Secretary
Ministry of Finance
Department of Expenditure

New Delhi-110001.

4. Secretary
Department of Personnel and Training
New Delhi-110001.

...Respondents

(By Advocate Shri S.Prakash Shetty)

ORDER

(PER HON'BLE PRASANNA KUMAR PRADHAN, MEMBER (A))

The issue raised and the relief claimed in all the above OAs are exactly similar in nature and hence they have been taken together for consideration and passing a common order. For the purpose of convenience and reference, OA No. 326/2017 has been taken as the lead case.

2. The applicants in all the above mentioned cases joined the respondents organization as Attendant-A/Helper-A and after getting various promotions are now working as Sr. Project Assistant. The date of appointment as Attendant-A/Helper-A and promotion as regular Sr. Project Assistant of the applicants have been mentioned as follows:

Sl. No.	Name	Date of Appointment as Attendant-A/Helper-A	Promoted as Sr.Project Assistant
1.	P.S. Srinivasa Shetty	18.01.1982	01.03.2012
2.	S. Ravindra	02.08.1980	01.12.2010
3.	T Venugopal	24.09.1981	01.03.2012
4.	G.Rajagopalachar	14.05.1982	20.04.2012

3. According to the applicants, the DoPT introduced the ACP/MACP scheme to provide financial upgradation of the central civilian employees. Based on recommendation of the Screening Committee and approval accorded by the competent authority the applicants were allowed 1st ACP to the grade pay of Rs. 4200/- in 2003 and 2nd ACP with the grade pay of Rs. 4800/- in 2006 vide order dt.18.9.2012. They also became regular Project Assistants thereafter from the

OAs.No.170/00326,00338,00339 & 00347/2017/CAT/Bangalore Bench dates mentioned above. Thereafter the applicants were granted financial upgradation under 3rd MACP in PB 2 with grade pay of Rs.5400/- on completion of 30 years of service. The dates of grant of 1st ACP, 2nd ACP and 3rd MACP in the case of the applicants are as follows:

Sl. No.	Name	1 st ACP	2 nd ACP	3 rd MACP
1.	P.S. Srinivasa Shetty	15.07.2003	18.12.2006	18.12.2012
2.	S. Ravindra	15.07.2003	05.06.2006	05.06.2012
3.	T Venugopal	15.07.2003	06.09.2006	06.09.2012
4.	G.Rajagopalachar	15.07.2003	16.12.2006	16.12.2012

4. According to the applicants, the respondents issued an Office Memorandum on 24/26.12.2009 in respect of revision of pay scale to the employees of DOS/ISRO and assignment of grade pay of Rs.5400/-. In terms of the said OM, the following category employees who were assigned grade pay of Rs.4800/- on completion of 4 years from the date of assigning the grade pay of Rs.4800/- are entitled to get the higher grade pay of Rs.5400 in PB 3:

- (i) Personnel Secretary
- (ii) Project Personnel Secretary
- (iii) Senior Project Assistant
- (iv) Assistant Catering Manager
- (v) Assistant Security Officer

5. According to the applicants, they being Senior Project Assistant are eligible for placement in PB 3 with grade pay of Rs.5400/- immediately after completion of 4 years in the grade pay of Rs.4800/-. They also mentioned that some similarly situated employees approached this Tribunal in OA No. 308/2013 for placement in PB 3 with grade pay of Rs. 5400/- which was allowed and the respondents were directed to pay the benefits (Anneuxre-A6). The respondents approached

the Hon'ble High Court of Karnataka in Writ Petition No. 32501/2016 against the order of the Tribunal and the Hon'ble High Court of Karnataka dismissed the Writ Petition and confirmed the order of the Tribunal (Annexure-A7). Thereafter the respondents took up the matter before the Hon'ble Apex Court in SLP No.34238/2016 and the said SLP was dismissed (Annexure-A8). Thereafter the respondents granted PB 3 with grade pay of Rs.5400/- to the applicants therein vide order dated 24.04.2017 (Annexure-A9). Though the applicants were similarly placed, they were not granted the same benefit. Hence the applicants filed their representation to Respondent No. 4 for assigning the grade pay of Rs.5400/- in PB 3 on completion of 4 years from the date of assigning the grade pay of Rs.4800/-. However, the representations submitted by the applicants in May/June, 2017 were rejected by the respondents on the ground that the order of the Hon'ble Tribunal was restricted only to the applicants therein and cannot be granted to the applicants. A copy of the said communication by the respondents in OA No.326/2017 is at Annexure-A11. Aggrieved by the rejection of their claims, the applicants have approached the Tribunal in the present OAs and sought direction to the respondents to grant grade pay of Rs.5400/- in Pay Band 3 to the applicants from the date they completed 4 years of service in grade pay of Rs.4800/-.

6. The respondents have submitted a reply statement in which they have submitted that based on the 5th Central Pay Commission recommendation, the Central Government introduced Assured Career Progression Scheme vide OM dated 09.08.1999 (Annexure-R1) for the Central Government civilian employees which envisaged grant of two financial upgradations for Group B, C and D employees on completion of 12 years and 24 years of regular service if no regular promotions during the prescribed periods have been availed by the employee. Thereafter, following the 6th Central Pay Commission recommendation, ACP

OAs.No.170/00326,00338,00339 & 00347/2017/CAT/Bangalore Bench scheme was modified and Modified Assured Career Progression Scheme (MACP) was brought into effect with effect from 01.09.2008 which envisaged three financial upgradations for Group A, B and C employees in the hierarchy of grade pay on completion of 10, 20 and 30 years of service. The respondents submit that following the revision of the pay scale, the respondents issued an OM in line with the 6th Pay Commission recommendation and accordingly the persons holding the post of Personal Secretary/Sr. Project Assistant were allowed Pay Band of Rs.9300-34800/- with grade pay of Rs.4800/- with effect from 01.01.2006. The said OM also stipulate that on completion of 4 years of regular service in the post of Personal Secretary/Sr. Project Assistant in grade pay Rs.4800/- in PB 2, the employees will be granted non-functional selection grade pay of Rs.5400/- in PB 3. Subsequently an OM dated 24/26.12.2009 was issued stating that employees in the category of Personal Secretary, Project Personal Secretary, Sr. Project Assistant, Assistant Catering Manager and Assistant Security Officer who are assigned with grade pay of Rs. 4800/- shall be granted grade pay of Rs. 5400/- in PB 3 on completion of 4 years from the date of assigning the grade pay of Rs. 4800/-, i.e., from 01.01.2010 (Annexure-R3).

7. According to the respondents, one Smt. Satyabhama of Vikram Sarabhai Space Centre, Thiruvananthapuram, who was getting grade pay of Rs.4800/- under ACP scheme approached the Ernakulam Bench of the Tribunal for grant of non-functional selection grade at par with employees who were granted grade pay of Rs.4800/- on regular promotion and the Tribunal quashed the said OM and directed the respondents to grant the grade pay of Rs.5400/- in PB 3. The said order was also upheld by the Hon'ble High Court of Kerala and was complied with. Thereafter a further clarification was issued by the Government on 13.12.2012 (Annexure-R4) that for becoming eligible for grant of grade pay of Rs.5400/- the employee has to complete 4 years of regular service in specific

post with grade pay of Rs.4800/- after appointment/promotion thereto. However one Shri Mallachari and Shri Shivakumar, citing the case of Smt. Satyabhama, approached this Tribunal in OA No. 308/2013 making similar prayer for assigning the grade pay of Rs.5400/- and this Tribunal relying on the case of Smt. Satyabhama allowed the OA vide order dated 27.10.2015 allowing the applicant similar benefit of grant of grade pay of Rs. 5400/- in PB-3. The Writ Petition No. 32524/2016 and 32501/2016 filed by the respondents before the Hon'ble High Court of Karnataka was also dismissed. The SLP filed by the respondents was also dismissed by the Hon'ble Apex Court. Consequent to dismissal of SLPs, the order of the Hon'ble Tribunal was implemented with stipulation that they shall not be treated as precedence.

8. In respect of all the OAs the respondents have given the career progression of the applicants right from the date of joining the service. The career progression of the applicant in OA No.326/2017 is mentioned as an example and is as follows:

Designation	w.e.f.	Details	Pay Scale
Attendant 'A'	18.10.1982	Initial appointment	200-3-206-4-234-EB-4-250
Office Clerk 'A'	18.12.1982(Date of Charge Report)	Appointed/Selected	260-6-290-EB-6-326-8-366-EB-8-390-10-400
Office Clerk 'B'	18.12.1986 (Date of Charge Report)	Promotion	1200-30-1560-EB-40-2040
Assistant 'A'	12.08.2003	Promotion	5000-150-8000
Assistant 'A'	15.07.2003	1 st financial upgradation under the ACP Scheme	Pre-revised scale of Rs. 5000-150-8000/-
Assistant 'B'	02.08.2006	Promotion	Pre-revised scale of Rs.5500-175-9000/-
Sr. Assistant 'A'	18.12.2006	2 nd financial upgradation under ACP Scheme	Pay band of Rs.9300-34800/- with GP of Rs.4800/-
Senior Project Assistant	01.03.2012	Promotion	Pay band of Rs.9300-34800/- with GP of Rs.4800/-
Senior Project Assistant	18.12.2012	Third Financial Upgradation under MACP Scheme in PB-II	Pay band of Rs.9300-34800/- with GP of Rs.5400/-

OAs.No.170/00326,00338,00339 & 00347/2017/CAT/Bangalore Bench

The career progression of other applicants are also exactly similar except for the specific date of appointment/promotion to different grades.

9. The respondents further referred to the subsequent clarificatory OM dated 13.12.2012 and said that since the applicants received the grade pay of Rs.4800/- under ACP but not on promotion/appointment to the specific posts of Personal Secretary/Sr. Project Assistant, they are not entitled to the non-functional selection grade of PB 3 with grade pay of Rs. 5400/- as has been claimed by them. They also submit that the applicants have been granted all the admissible benefits by the respondents organization and they are not entitled to any further benefit. The respondents have also mentioned that some more employees of the department had approached the Ernakulam Bench of the Tribunal in OA Nos. 521, 514 and 544/2013 and the Tribunal had dismissed their claim in terms of the clarificatory OM dated 13.12.2012. Therefore they submit that the applicants are not entitled to any further benefit as claimed by them.

10. We heard the learned counsel for the parties. The learned counsel for the applicants have also filed a written statement in which they practically reiterated the submission made in the OA and highlighted the fact that this issue has already been considered by this Tribunal and benefit was granted to the applicant in OA No. 308/2013. The Tribunal in its order at that time had also referred to the OM dated 13.12.2012 and held that the benefit to the applicant have concretized in 2011 itself and hence they have become eligible to get the grade pay of Rs.5400/- in PB-3. The order of the Tribunal was also challenged before the Hon'ble High Court of Karnataka which has upheld the order passed by the Tribunal. The Hon'ble High Court had clearly observed that the subsequent Office Memorandum of 13.12.2012 seeks to curtail the entitlement of the revised pay rules which cannot be done. Therefore the applicants are entitled to the grade

pay of Rs.5400/- in PB-3 on completion of 4 years of service in the grade pay of Rs.4800/-.

11. The learned counsel for the respondents while highlighting the submission already made in the OA submitted that there is a distinction between the persons holding the post of Sr. Project Assistant in grade pay of Rs.4800/- and persons getting the grade pay of Rs.4800/- under the ACP benefit. They have also mentioned that there is a mistake in OM dated 24/26.12.2009. Therefore the clarificatory OM dated 13.12.2012 sought to clearly mention the actual position. They also mentioned that the Ernakulam Bench of the Tribunal subsequently dismissed the claim of the petitioners based on the 2012 clarificatory OM. On a query made to the learned counsel for the respondents as to how the applicants who got 1st promotion from Office Clerk 'A' to Office Clerk 'B' were granted three financial upgradations thereafter, the learned counsel and the department representative mention that following the 6th Pay Commission the post of Office Clerk became redundant and hence this department after considering the matter in 2011 issued an order saying that promotion from Office Clerk 'A' to Office Clerk 'B' may be ignored for the purpose of granting financial upgradation under ACP/MACP for those employees who were inducted as Office Clerk 'A' through open recruitment process. However, he could not clarify as to whether the said order was issued with the concurrence of the DoPT and the Ministry of Finance as the original scheme relating to ACP/MACP was issued by DoPT in concurrence with the Ministry of Finance. He also could not clarify as to whether there was any provision in the ACP scheme for making such exemption. Neither the Ld.Counsel for the applicants nor the respondents could indicate whether all the four applicants have since been granted Grade Pay Rs.5400 in PB-3 on completion of 4 years of service as Sr.Project Assistant.

12. We have carefully considered the facts of the case and submissions made by either side. The relief claimed in the present OAs is clearly based on the order of this Tribunal which was upheld by the Hon'ble High Court of Karnataka and the Hon'ble Apex Court and by which a person on completion of 4 years of service in PB 2 with grade pay of Rs.4800/- were allowed non-functional upgradation to PB 3 with grade pay of Rs.5400/- in terms of OM dated 24/26.12.2009. The Tribunal in its order dated 27.10.2015 in OA No. 308/2013 had observed vide para 2 to 6 as follows:

2. *The respondents would submit that later on another OM was issued by the government No.E.29011/1/2008-V dated 13.12.2012, which is after the event, it says as follows:*

*There have been enquiries from Centres/Units as to whether DOS OM dated December 24/26, 2009 ibid is applicable to employees who are in the Grade Pay of Rs.4,800/- granted as Financial Upgradation under ACP/MACP. The matter has been examined in the Department in consultation with DoPT. As per Sl. No.II(2) of Section II of Part-B to the First Schedule to CCS (RP) Rules, 2008, for grant of Grade Pay of Rs.5,400/-, employees have to **complete four years regular service in specific posts with a Grade Pay of Rs.4,800/- after appointment/promotion thereto** and has no relevance to the date of acquiring the Grade Pay of Rs.4,800/- through Financial Upgradations under ACP/MACP. Financial Upgradation granted under ACP/MACP are only placements and not to be treated as equivalent to appointment/promotion to a post. Further, as per ACP/MACPS, on grant of Financial Upgradations, there shall be no change in the designations, classifications or higher status and only certain benefits which are linked to pay drawn by an employee are permitted.*

In view of the foregoing, the undersigned is directed to clarify that DOS OM dated December 24/26, 2009 referred to above is applicable only to the categories of designations/posts listed under para 2 of DOS OM dated December 24/26, 2009 ibid on rendering four years regular service in the appointed/promoted post with a Grade Pay of Rs.4,800/- and not to those personnel who are assigned Grade Pay of Rs.4,800/- as Financial Upgradations under ACP/MACP based on service of four years rendered from the date of Financial Upgradation. The undersigned is also directed to clarify that service rendered in the Grade Pay of Rs.4,800/- granted by way of Financial Upgradation under ACP/MACP without involving change in designation/post shall not be taken into account for determining the period of four years for the purpose of grant of grade pay of Rs.5,400/-.

3. *The marked difference in between these 2 notifications is that:*
 - 1) *It has been issued after the event had been concretized and a right became a legitimate expectation of the government employee.*
 - 2) *It seeks to create a situation that for aspirations to the next payscale ascension to the next post or the designated post with a tenure of at least 4 years in that post would become then necessary. We had, therefore, asked for the legislature intent expressed by the people through parliamentary*

proceedings to be placed but then other than that it is issued as a clarification nothing more is forthcoming.

4. *The respondents relies on a judgment of the Hon'ble Apex Court in K.S. Krishnaswamy & Others Vs UOI & Another (2006) 13 SCC 215 wherein in Para 14, the counsel indicates that, it is mentioned that the clarification brought about in the OM is of the last post held by the pensioner as the determinant of the last scale of pay but then in Para 15 it is mentioned as follows "It is common knowledge that the corresponding increase in any Pay Commission is of the scale of pay and not of the post." Therefore, the contentions raised by the respondents in this respect does not seem to be correct as Hon'ble Apex Court themselves have stated that the post may not come in as determinant factor but the scale in pay will. Annexure-R2 produced by the respondents themselves canvasses this view and nothing else. Therefore, Annexure-R8 claiming a retrospective operation, even though mentioned as a clarification cannot lie in the eye of law because for every retrospective operation there must be substantive enablement under statute such a statute is not produced or is not relied upon by the respondents. In order to retrospectively prejudice a government employee there has to be specific and significant enablement on the part of the respondents but since no such enablement is pointed out even on specific query, it is to be concluded that Annexure-R8 will not lie under law. At any rate the retrospective operation of Annexure-R8 is highly suspect.*
5. *Therefore, it is declared that the operative portion of Annexure-R8 will not be applicable to the applicant and similarly situated as they have concretized their right in 2011 itself and thus became enabled to get the benefit of Grade Pay of Rs.5,400/-. This view has been upheld by the Co-ordinate Bench at Ernakulam which had gone in judicial review in the Hon'ble High Court of Kerala which confirmed the same. We are in respectful agreement with these two institutions.*
6. *Therefore, OA is allowed. Applicants is declared as being eligible to being granted a Grade Pay of Rs.5,400/- as on the relevant date in 2011 onwards. The benefit thereto shall be made available to the applicant within 2 months next."*

13. The said order of the Tribunal was challenged before the Hon'ble High Court of Karnataka in Writ Petition No. 32524/2016 and 36516/2016 and the Hon'ble High Court of Karnataka vide para 5 to 8 of its order dated 12.07.2016 held as follows:

5. *Be it recorded, in the Revised Pay Rules, 2008, such restriction of completion of four years was not provided. Further, in 24/26.12.2009, the Central Government by issuance of the office memorandum also provided that the completion of four years in regular service after appointment/promotion thereto has no relevance. But subsequently, by office memorandum dated 13.12.2012, the earlier office memorandum is amended and for entitlement of the Grade Pay of Rs.5,400/-, the requirement of completion of four years in the Grade Pay of Rs.4,800/- was included.*
6. *Even if the contention raised by the learned counsel that the issuance of office memorandum was in exercise of the statutory rule under Rule 17 of the Revised Pay Rules, 2008, then also earlier there was already an exercise of the power by virtue of interpretation vide office memorandum dated 24/26.12.2009. The very interpretation already made could not be modified by subsequent office memorandum dated 13.12.2012, more particularly when in the initial Revised Pay Rules and in the schedule appended to the Rules, there was no requirement of completion of four years in the Grade Pay of Rs.4,800/-.*

OAs.No.170/00326,00338,00339 & 00347/2017/CAT/Bangalore Bench

7. *Further, when the pay scale is revised, the equivalent pay scale with corresponding Grade Pay is to be considered and further incorporation thereof of any condition for entitlement would result into amendment in the statutory rules already framed of Revised Pay Rules, 2008, which is not permissible by office memorandum. It is hardly required to be stated that by executive power, the statutory rule cannot be amended. In the earlier office memorandum dated 24/26.12.2009, it was only by view of clarification. But the subsequent office memorandum dated 13.12.2012, the entitlement under the Revised Pay Rules is sought to be curtailed. Even if Rule 17 is considered, it does not leave any power for amendment of the Rules. If the scope and ambit is considered of Rule 17 for interpretation, nothing can be added for curtailment of the benefit. If Rule 17 is pressed in service, one can say that the office memorandum dated 13.12.2012 is beyond scope of the Rule. Under these circumstances, the Tribunal has rightly found that when equivalent Revised Pay Scale is provided for Grade Pay of Rs.5,400/- by office memorandum, such benefit cannot be curtailed that too with the retrospective effect.*
8. *In view of the above, the subsequent view taken by the Tribunal in Ernakulam bench would be of no help to the learned counsel appearing for the petitioners. We are refraining from making any further observation since there is no challenge to the said decision before us nor such challenge can be brought before this Court on account of territorial jurisdiction of this Court."*

Therefore, the issue of whether the applicants were entitled to receive the non-functional upgradation to PB 3 with grade pay of Rs.5400/- on completion of 4 years of service in the grade pay of Rs.4800/- has attained finality and hence the same principle shall also apply to the applicants in the present OAs.

14. However while going through the service particulars of the employees, we are unable to appreciate the financial upgradation granted by the respondents to the applicants under ACP/MACP which resulted in their getting GP 4800 as 2nd financial upgradation under ACP. It is evident that all the applicants were initially appointed as Office Clerk-A in the pay scale of 260-6-290-EB-6-326-8-366-EB-8-390-10-400 which in terms of 4th Central Pay Commission correspond to the pay scale of 975-25-1150-EB-30-1660. However the post of Office Clerk 'B' carried a pay scale of 1200-30-1560-EB-40-2040 is clearly a promotional post and the applicants got promotion from Clerk-A to Clerk-B.

15. The Government of India introduced the Assured Career Progression for Central Government employees vide OM No. 35034/1/97-Estt.(D) dated 09.08.1999

following the recommendation of the 5th Pay Commission. Para 3 to 5 and 8 and 11 of the aforesaid OM and para 4, 5.1 and 13 relate to the condition for grant of benefit of ACP scheme in the Annexure of the said OM stipulate as follows:

“3. Groups ‘B’, ‘C’ AND ‘D’ services/posts and isolated posts in Groups ‘A’, ‘B’, ‘C’ AND ‘D’ Categories

- 15.1. *While in respect of these categories also promotion shall continue to be duly earned, it is proposed to adopt the ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Keeping in view all relevant factors, it has therefore, been decided to grant two financial upgradations [as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 (in relation to Group ‘C’ and ‘D’ employees) entered into with the Staff Side of the National Council (JCM)] under the ACP Scheme to Groups ‘B’, ‘C’ and ‘D’ employees on completion of 12 years and 24 years (subject to condition No.4 in Annexure-I) of regular service respectively. Isolated posts in Groups ‘A’, ‘B’, ‘C’ and ‘D’ categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees (including those with temporary status), ad hoc and contract employees shall not qualify for benefits under the aforesaid Scheme. Grant of financial upgradations under the ACP Scheme shall, however, be subject to the conditions mentioned in Annexure-I.*
- 15.2. *Regular Service for the purpose of the ACP Scheme shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant Recruitment/Service Rules.*
4. *Introduction of the ACP Scheme should, however, in no case affect the normal (regular) promotional avenues available on the basis of vacancies. Attempts needed to improve promotion prospects in organisations/cadres on functional grounds by way of organisational study, cadre reviews, etc., as per prescribed norms should not be given up on the ground that the ACP Scheme has been introduced.*
5. *Vacancy-based regular promotions, as distinct from financial upgradation under the ACP Scheme, shall continue to be granted after due screening by a regular Departmental Promotion Committee as per relevant rules/guidelines.*
8. *The ACP Scheme shall become operational from the date of issue of this Office Memorandum.*
1. *Any interpretation/clarification of doubt as to the scope and meaning of the provisions of the ACP scheme shall be given by the Department of Personnel and Training (Establishment-D)*

ANNEXURE-I

Conditions for grant of benefits under the ACP Scheme

16. *The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfilment of prescribed*

OAs.No.170/00326,00338,00339 & 00347/2017/CAT/Bangalore Bench conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc., this would have consequential effect on the second upgradation which would also get deferred accordingly;

5.1 Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in situ promotion and fast-track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him;

13. Existing time-bound promotion schemes, including in situ promotion scheme, in various Ministries/Departments may, as per choice, continue to be operational for the concerned categories of employees. However, these schemes, shall not run concurrently with the ACP Scheme. The Administrative Ministry/Department -- not the employees -- shall have the option in the matter to choose between the two schemes, i.e. existing time-bound promotion scheme or the ACP Scheme, for various categories of employees. However, in case of switch-over from the existing time-bound promotion scheme to the ACP Scheme, all stipulations (viz. for promotion, redistribution of posts, upgradation involving higher functional duties, etc) made under the former (existing) scheme would cease to be operative. The ACP Scheme shall have to be adopted in its totality;"

16. Following the 6th Pay Commission recommendation, the Government have introduced the Modified Assured Career Progression Scheme vide its OM dated 19.05.2009 and para 2, 9 and 11 of the OM and para 1, 2 and 5 of the scheme annexed in the said OM mentioned as follows:

2. The Government has considered the recommendations of the Sixth Central Pay Commission for introduction of a MACPS and has accepted the same with further modification to grant three financial upgradations under the MACPS at intervals of 10, 20 and 30 years of continuous regular service.
9. Any interpretation/clarification of doubt as to the scope and meaning of the provisions of the MACP Scheme shall be given by the Department of Personnel and Training (Establishment-D). The scheme would be operational w.e.f. 01.09.2008. In other words, financial upgradations as per the provisions of the earlier ACP Scheme (of August, 1999) would be granted till 31.08.2008.
11. It is clarified that no past cases would be re-opened. Further, while implementing the MACP Scheme, the differences in pay scales on account of grant of financial upgradation under the old ACP Scheme (of August 1999) and under the MACP Scheme within the same cadre shall not be construed as an anomaly.

ANNEXURE – I

Modified Assured Career Progression Scheme (MACPS)

1. *There shall be three financial upgradations under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years' service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade-pay.*
 2. *The 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 1, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. Thus, the grade pay at the time of financial upgradation under the MACPS 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. In such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/organisation will be given only at the time of regular promotion.*
17. *Promotions earned/upgradation granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACPs.*

Illustration – I

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

- a) *A Government servant who was recruited in the hierarchy in the pre-revised pay scale Rs. 5000-8000 and who did not get a promotion 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 Rs. 5500-9000 and Rs. 6500-10500.*
- b) *Another Government servant recruited in the same hierarchy in the pre-revised scale of Rs. 5000-8000 has also completed about 25 years of service, but he got two promotions to the next higher grades of Rs. 5500-9000 and Rs. 6500-10500 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 Rs. 5500-9000 and Rs. 6500-10500 prior to 1.1.2006 will be ignored on account of merger of the pre-revised scales of Rs. 5000-8000, Rs. 5500-9000 and Rs. 6500-10500 recommended by the Sixth CPC. As per CCS (RP) Rules, both of them will be granted grade pay of Rs. 4200 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 Rs. 4600 and Rs. 4800 in the pay band PB-2”.

17. It seems that the Department of Space had undertaken a cadre review in 2003 and decided to abolish induction at the level of Office Clerk-A and introduction of induction at the level of Office Clerk-B. Following the implementation of 6th Pay Commission's recommendations, issuance of

OAs.No.170/00326,00338,00339 & 00347/2017/CAT/Bangalore Bench revised pay rules and introduction of the Modified Assured Career Progression Scheme(MACPS), the Dept. of Space issued an Office Memorandum dtd.3.8.2009 providing clarifications regarding grant of MACP scheme. In the said OM, the Dept. of Space clarified that the promotion from the post of Sr.Assistant 'A' to that of Sr.Assistant 'B' shall be ignored for the purpose of MACPS. However, the promotion from the post of Office Clerk-A to that of Office Clerk-B should not be ignored for the purpose of MACPS. The point of doubt and clarifications under SI.No.1 & 2 in the said OM reads as follows:

Sl.No.	Point of Doubt	Clarifications
01.	In the Revised Pay Structure, the posts of Sr.Assistant 'A' and Sr.Assistant 'B' carry the same Grade Pay of Rs.4200/- in PB-2. Para 8 of the Modified ACP Scheme stipulates that the promotions earned in the post carrying same Grade Pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of Modified ACP Scheme. It may kindly be clarified whether the promotion from the post of Sr.Assistant 'A' to that of Sr.Assistant 'B' is to be treated as promotion for the purpose of Modified ACP Scheme	The promotion from the post of Sr.Assistant 'A' to that of Sr.Assistant 'B' shall be ignored for the purpose of MACPS.
02.	In terms of DOS OM No.9/2/2003-V dated 15.07.2003, the grade of Office Clerk 'A' has been phased out and there has been no direct induction in this grade since then. Since direct induction is made at the level of Assistant/Office Clerk 'B', it may kindly be clarified whether the promotion availed from the post of Office Clerk 'A' to that of Office Clerk 'B' (Assistant) should be ignored for the purpose of Modified ACP Scheme.	The promotion from the post of Office Clerk 'A' to that of Office Clerk 'B' (Assistant) should NOT be ignored for the purpose of MACPS.

18. The Department of Space later issued an Office Memorandum No.A12013/3/2009 dtd.9.11.2011 which mentions as follows:

- I. Promotion from the post of OCA to OCB may be ignored for the purpose of grant of financial upgradations under ACP/MACP Scheme in respect of those employees who were inducted as OCA through open recruitment process.
- II. The date of acquiring the grade of OCB (re-designated as Assistant) will be treated as date of direct recruitment for the limited purpose of grant of financial upgradations under ACP/MACP Scheme.

Subsequent clarification in OM dtd.3.4.2012 stated to delete II above and simply say

as follows:

“Promotion from the post of Office Clerk A to Office Clerk B may be ignored for the purpose of grant of financial upgradations under ACP/MACP Scheme in respect of those employees who were inducted as Office Clerk A through open recruitment process.”

Following this, the Dept. of Space issued another Office Memorandum dtd. 7.8.2012 in which they further made clarification as under:

- i) For the purpose of reckoning services for ACP/MACP, the date of appointment as OC-A shall be taken into account in cases where normalization to higher grades are effected.
- ii) The date of extension of the benefits contained in DOS OM dated November 09, 2011 read with April 03, 2012 shall be w.e.f. 15th July, 2003 i.e., the date on which the induction level has been enhanced from OC-A to OC-B. In other words, although in effect the promotion to the post of OC-B could have taken place between 9.8.1999 and 14.7.2003, the Actual benefit of ignoring promotion will be effective from 15.7.2003 only.

19. It is thus evident that the earlier stipulation that the date of acquiring the grade of OCB will be treated as date of direct recruitment for the limited purpose of grant of financial upgradations under ACP/MACP Scheme was modified to make it from the date of appointment as Office Clerk-A. These OMs dtd.9.11.2011, 3.4.2012 and 7.8.2012 extending the scope to ACP as well as MACP were at variance with the earlier OM dtd.3.8.2009 giving clarification on applicability of MACP following 6th Pay Commission recommendation. It is not clear from the Office Memorandum nor could be clarified by the department representative as to whether the said Memorandums were issued in consultation with the Department of Personnel and Training or the Ministry of Finance since both Office Memorandums introducing the ACP and MACP schemes, it is clearly stipulated that any interpretation/clarification of doubt as to the scope and meaning of the provisions of the ACP scheme or MACP scheme shall be given by the Department of Personnel and Training.

20. Following the issuance of OM dtd.7.8.2012, the respondent department issued an office order on 18.9.2012 granting financial upgradations to the

OAs.No.170/00326,00338,00339 & 00347/2017/CAT/Bangalore Bench applicants and others both under ACP as well as MACP from an earlier date and vide which the applicants started getting Grade Pay Rs.4800 consequent to the 2nd financial upgradation granted under ACP.

21. Subsequent to the 6th Pay Commission recommendation, there were mergers of different pay scales like 5000-8000, 5500-9000 & 6500-10500 into one and hence there was a provision in the MACP scheme that promotion and upgradation granted in the past to those grades which are now carry the same grade pay due to merger of scales, shall be ignored for the purpose of upgradation under MACP. However, there was no such provision/stipulation under ACP scheme for ignoring any promotion. Therefore, ignoring the promotion from Clerk-A to Clerk-B for the purpose of grant of ACP benefit seems to us as in contravention of the ACP scheme. Therefore it needs to be examined whether the department can ignore the promotion from the post of OC-A to OC-B for the purpose of grant of benefit under ACP scheme when no such provision is existed in that scheme that too following the 6th Pay Commission recommendation. No doubt the MACP guidelines allows for ignoring certain promotions for grant of financial upgradations under MACP. But it shall be under the purview and provisions of MACP scheme only but not under ACP. Further, there is a difference in the financial upgradations allowed under the ACP and the MACP schemes. The MACP scheme envisages merely placement of pay in the next Grade Pay in the hierarchy and not the benefit of next higher scale as available in the promotion which was allowed under ACP. Therefore, in the event promotion to certain category of posts have to be ignored for the purpose of granting financial upgradation under MACP, the benefit has to be in terms of the stipulation made in the MACP scheme but not under ACP scheme.

22. As specified in the guidelines under ACP and MACP schemes any interpretation or relaxation under the ACP or MACP schemes shall have to be done in concurrence with the Dept. of Personnel and Training and if required with the Ministry of Finance. Neither the OMs indicate nor the departmental representative could throw any light as to whether concurrence of DoPT was taken for this. Therefore, it is necessary that the Office Memorandums dtd.9.11.2011, 3.4.2012 & 7.8.2012 issued by the respondent department and the grant of ACP & MACP benefits in accordance with the said OMs needs to be reconsidered first in consultation with the DoPT and Ministry of Finance specially in the light of our observation in the preceding paras. This is because if grant of ACP benefits to the applicants by the respondents which prima facie appears to be unjustified is to be revised then it will have implication on the dates from which the applicants would be entitled to get the Grade Pay Rs.4800. Consequently it will impact the date of assigning of Grade Pay Rs.5400 in PB-3 which will be on completion of 4 years from the date of assigning the Grade Pay Rs.4800.

23. Therefore, on detailed consideration of entire facts and circumstances of the case and in the light of the discussions made in the preceding paras, we issue the following directions:

- i. The Dept. of Personnel & Training in consultation with the Dept. of Expenditure shall examine the validity of OMs dtd.9.11.2011, 3.4.2012 and 7.8.2012 in the light of the guidelines issued for grant of ACP and MACP schemes in general and in particular as to whether the promotion from the post of Office Clerk-A to Office Clerk-B can be ignored for the purpose of grant of financial upgradation under ACP scheme and issue a clear order on the justifiability of the said Memorandums and the orders issued by the respondents granting ACP

OAs.No.170/00326,00338,00339 & 00347/2017/CAT/Bangalore Bench benefits in 2012 pursuant to the said OMs. The Dept. of Space shall immediately take up the matter with the DoPT with all relevant details relating to issuance of the said OMs. This shall be done within a period of three(3) months from the date of receipt of a copy of this order.

- ii. Based on the decision taken by the DoPT on the grant of financial upgradation allowed to the applicants under the ACP and what will be their actual entitlement, the applicants shall be entitled to the Grade Pay of Rs.5400 in PB-3 on completion of 4 years of regular service from the date of assignment of Grade Pay of Rs.4800 subject to the stipulation prescribed for grant of the said benefit. This shall be done within a period of three(3) months thereafter.

24. The OAs are accordingly disposed of with the aforesaid direction. No order as to costs.

(P.K. PRADHAN)
MEMBER(A)

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

/ps/

Annexures referred to by the applicant in the OA.170/00326/2017

Annexure-A1: Copy of appointment order
Annexure-A2: Copy of office order dtd.18.09.2012
Annexure-A3: Copy of office order dtd.01.10.2012
Annexure-A4: Copy of order dtd.08.09.2016
Annexure-A5: Copy of OM dtd.24/26.12.2009
Annexure-A6: Copy of order dtd.27.10.2015 in OA.No.308/2013
Annexure-A7: Copy of order dtd.02.09.2016 in WP.No.32501/2016(S-CAT)
Annexure-A8: Copy of order dtd.23.02.2017 in SLP.No.34238/2016
Annexure-A9: Copy of OM dtd.24.04.2017
Annexure-A10: Copy of representation dtd.08.05.2017
Annexure-A11: Copy of impugned Memorandum dtd.05.06.2017

Annexures with reply statement:

Annexure-R1: Copy of OM dated 9.8.1999
Annexure-R2: Copy of OM dtd.12.09.2008
Annexure-R3: Copy of OM dtd.24/26.12.2009
Annexure-R4: Copy of clarificatory OM dtd.13.12.2012
Annexure-R5: Copy of order dtd.27.10.2015 passed in OA.No.308/2013
Annexure-R6: Copy of order dtd.12.7.2016 passed in WP.No.32524/2016(S-CAT) & 36516/2016 by the Hon'ble High Court of Karnataka
Annexure-R7: Copy of dtd.02.09.2016 in WP.No.32501/2016(S-CAT)
Annexure-R8: Copy of order dtd.23.02.2017 in SLP.No.34238/2016
Annexure-R9: Copy of OM dtd.24.04.2017

Annexures referred to by the applicant in the OA.170/00338/2017

Annexure-A1: Copy of appointment order
Annexure-A2: Copy of office order dtd.18.09.2012
Annexure-A3: Copy of office order dtd.04.10.2012

OAs.No.170/00326,00338,00339 & 00347/2017/CAT/Bangalore Bench

Annexure-A4: Copy of OM dtd.24/26.12.2009

Annexure-A5: Copy of order dtd.27.10.2015 in OA.No.308/2013

Annexure-A6: Copy of order dtd.02.09.2016 in WP.No.32501/2016(S-CAT)

Annexure-A7: Copy of order dtd.23.02.2017 in SLP.No.34238/2016

Annexure-A8: Copy of OM dtd.24.04.2017

Annexure-A9: Copy of representation dtd.08.05.2017

Annexure-A10: Copy of impugned Memorandum dtd.05.06.2017

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Annexure-R3: Copy of OM dtd.24/26.12.2009

Annexure-R4: Copy of clarificatory OM dtd.13.12.2012

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Annexure-R7: Copy of dtd.02.09.2016 in WP.No.32501/2016(S-CAT)

Annexure-R8: Copy of order dtd.23.02.2017 in SLP.No.34238/2016

Annexure-R9: Copy of OM dtd.24.04.2017

Annexures referred to by the applicant in the OA.170/00339/2017

Annexure-A1: Copy of appointment order

Annexure-A2: Copy of office order dtd.18.09.2012

Annexure-A3: Copy of office order dtd.04.10.2012

Annexure-A4: Copy of order dtd.08.09.2016

Annexure-A5: Copy of OM dtd.24/26.12.2009

Annexure-A6: Copy of order dtd.27.10.2015 in OA.No.308/2013

Annexure-A7: Copy of order dtd.02.09.2016 in WP.No.32501/2016(S-CAT)

Annexure-A8: Copy of order dtd.23.02.2017 in SLP.No.34238/2016

Annexure-A9: Copy of OM dtd.24.04.2017

Annexure-A10: Copy of representation dtd.29.05.2017

Annexure-A11: Copy of impugned Memorandum dtd.05.06.2017

Annexures with reply statement:

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Annexure-R2: Copy of OM dtd.12.09.2008

Annexure-R3: Copy of OM dtd.24/26.12.2009

Annexure-R4: Copy of clarificatory OM dtd.13.12.2012

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Annexure-R8: Copy of order dtd.23.02.2017 in SLP.No.34238/2016

Annexure-R9: Copy of OM dtd.24.04.2017

Annexures referred to by the applicant in the OA.170/00347/2017

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Annexure-A2: Copy of office order dtd.18.09.2012

Annexure-A3: Copy of office order dtd.04.10.2012

Annexure-A4: Copy of OM dtd.24/26.12.2009

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