

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.473-485 of 2014

DATED THIS THE 17th DAY OF APRIL, 2018

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

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

1. Smt.P.Vijayalakshmi, 49 years
D/o Late Sri.Appukuttan Nair
Occn: UDC (14691077)
R/a No: 10th Main, 8th Cross
Maruthi Nagar, Malleshpalya
New Thippasandra Post
Bangalore: 560 075.

2. Sri.Anil Kumar P., 52 years
S/o Late Sri.Parameswaran Nair
Occn: UDC (14691242F)
R/a No.43/5, DCA II Phase
Domlur II Stage, Bangalore: 560 071.

3. Sri.Mohan Kumar P., 49 years
S/o Late Sri.Parameswaran Nair
UDC (14691281)
R/a No.27/1, Indiragandhi
4th Main Road, Anarayanapura
Bangalore: 560 016.

4. Sri.K.P.Suresh Kumar, 47 years
S/o Late Sri.K.P.Subramanian
UDC (14691345A)
R/a No.55, Nandanam III Cross
5th Main, Ramanjanappa Layout
'A' Narayanapura
Bangalore: 560 016.

5. Sri.D.Sekar, 54 years
S/o Late Sri.Daveed
UDC (14691447)
R/a No.18/3, II Cross
Yallammam Koil Street
Hallasuru, Bangalore: 560 008.

6. Smt.Kilda Mary, 45 years
D/o Y.Thankappan
UDC (14691414)
R/a No.G1, Emerald Classic Apartments
Grade Garden 1st Cross
Ejipura, Bangalore: 560 017.

7. Sri.Rajappa Kurup VG, 43 years

S/o Sri.Gopalakrishna Kurup
UDC (14691462)
Krishnenthu
Nagarajappa Layout
'A' Narayanapura
Bangalore: 560 016.

8. Sri.Santhosh Kumar K.R.
Age: 43 years
S/o Late Sri.Purushothaman Nair
UDC (14691466)
R/a No.22, Nehru Street
4th Main, 'A' Narayanapura
Bangalore:560016.

9. Sri.N.Ramachandran, 42 years
S/o.Late Sri.M.V.Narasimha Naidu
UDC (14691534)
R/a No.102, 1st Main
4th Cross, Srinivasnagar
BSK 1st Stage
Bangalore:560 050.

10. Sri.P.Sivagurunathan, 45 years
S/o.Late Sri.R.Pragatheeswaran
UDC (14691515)
R/a Quarters No.43/2, DCA Quarters
4th Phase Domlur II Stage
Bangalore:560 071.

11. Sri.S.Venkatesh, 59 years
S/o.Late Sri.A.S.Seshachalam
Occn: UDC (14691489)
No.26/5, 'A' Type DCA Quarters
Someshwarapura Extension
Ulsoor, Bangalore:560 008.

12. Sri.G.Ganesan, 59 years
S/o Govinda Swamy
Occn: UDC (14691808)
R/a No.2, 7th Cross
West to Vinayaka Theatre
Thangamalai Nagar
DJ Halli, Bangalore:560 045.

13. Sri.G.Renukaprasad, 52 years
S/o. Late Sri.P.Guruchannabasavaiah
Occn: UDC (14691490)
R/a No.822, Sri Rangnath Nilaya
5th Main, Vijayanagar
Bangalore: 560 040.

All the applicants are working in the office of 515 Army Base Workshop
Halasuru, Bangalore.

(By Advocate Shri P.A.Kulkarni)

Vs.

1. Union of India
To be represented by its Secretary
Ministry of Defence
South Block
New Delhi: 110 001.
2. Director General of EME (Civil)
Master General of the Ordnance Branch
Integrated Headquarters of
Ministry of Defence (Army)
Defence Headquarters PO
New Delhi: 110 105.
3. OIC EME Records, Secunderabad
PIN:900453
C/o 56 APO
Chennai.
4. Commandant and MD
515Army Base Workshop
Halasuru, Bangalore:560 008.
....Respondents

(By Advocate Sri.M.Raja Kumar, ACGSC)

ORDER(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

All the applicants in the present OAs are holding civil posts in Defence service establishment. While the applicants No.1 to 10 joined as LDC, the applicants No.11 to 13 have initially joined as Group-D and became LDCs under 10% quota on 20.01.1992, 21.10.1999 & 20.1.1992 respectively. The detail service particulars of the applicants specifying the date of their appointment and the scale of pay, date of grant of 1st ACP and the date of promotion as UDC have been indicated in the statement at Annexure-A3. Subsequent to the introduction of the MACP scheme w.e.f. 01.09.2008, the applicants at Sl.No.1 to 10 were granted 2nd financial upgradation under MACP and placed in the scale of Rs.5200-20200(PB-1) with Grade Pay of Rs.2800. Since the

applicants No.11 to 13 had already got one promotion and one financial upgradation under ACP, they were granted 3rd financial upgradation under MACP in the scale of pay of Rs.5200-20200 + GP Rs.2800.

2. The applicants in the OAs have referred in detail to the earlier ACP scheme which envisages placement in the higher pay scale at the time of financial upgradation and the MACP scheme which was introduced replacing ACP scheme following 6th Pay Commission recommendation. They have also referred to an order of the Chandigarh Bench of this Tribunal in OA.No.1038/CH/2010 filed by one Sri Raj Pal in which he claimed for placement of 2nd financial upgradation under MACP in the pay scale of Rs.9300-34800 with GP of Rs.4200(enhanced to Rs.4600) as against his placement by the authority in PB-1 with GP Rs.2800. The Chandigarh Bench granted the relief to him vide its order dtd.31.5.2011. The said order was also upheld by the order of Hon'ble High Court of Punjab & Haryana vide its order dtd.19.10.2011 in CWP.19387/2011(Annexure-A4). An SLP filed by the Union of India in the Hon'ble Apex Court was dismissed vide order dtd.15.4.2013(Annexure-A5).
3. The applicants have further referred to a judgment of the Principal Bench of this Tribunal in OA.No.904/2012(Annexure-A6) wherein the UDCs like the present applicants claimed for placement in the higher pay scale of PB-2 with Grade Pay of Rs.4200 at the time of grant of MACP benefit and the Principal Bench in agreement with the order of the Chandigarh Bench of this Tribunal allowed their contention claiming entitlement for PB-2 with GP Rs.4200. Thereafter citing the above mentioned orders, the applicants have submitted individual representations to the authority for grant of 2nd and 3rd financial upgradations in PB-2 with GP Rs.4200(enhanced to Rs.4600) as against the

OA.No.473-485/2014/CAT/Bangalore Bench placement in PB-1 with GP Rs.2800(Annexures-A7 to A19). However, the same were not considered by the respondents. Therefore, the applicants have filed the present OA seeking the following relief:

"Direct the respondents to extend forthwith the pay scale of Rs.9300-84800+GP of Rs.4200(increased to Rs.4600) (in place of the actual placement of Rs.5200-20200+GP of Rs.2800) w.e.f. the dates of applicants 1 to 10's placement in the 2nd financial upgradation and applicants 11 to 13's placement in the 3rd financial upgradation with all the consequential benefits including the monetary benefits flowing there from."

4. The respondents in their reply statement reiterated the factual position as already mentioned by the applicants in the OA. They mentioned the hierarchy of Clerical Staff in the establishment as follows:

S.No.	Rank	Grade Pay
(a)	LDC	Rs.1900
(b)	UDC	Rs.2400
(c)	Office Supdt.	Rs.4200
(d)	EME Office (Civilian)	Rs.4600

They further mentioned that the clerks of Military Farms, New Delhi, those who are granted 2nd MACP in the grade pay of Rs.2800/- had approached the Principal Bench of the Tribunal by way of filing OA.No.904/2012 seeking the remedy. The said OA was decided in favour of the applicants (Defence Employees) vide its order dated 26 Nov 2012. In similar type of cases against the order passed by the Chandigarh Bench of the Tribunal in OA.No.1038/CH/2010 and the same was challenged by the Govt. of India and has filed CWP No.19387 of 2011 before the Punjab Haryana High Court, the Hon'ble High Court upheld the judgment of the Tribunal. Thereafter, Govt. of India filed SLP before the Hon'ble Supreme Court case No.CC No.7467 of 2013 and on 15 Apr 2013, the Hon'ble Supreme Court of India has dismissed the said case and upheld the judgment of High Court and CAT. DG EME Army HQ had been taken up the matter with Min. of Defence for issue of direction regarding grant of MACP benefit to the eligible employee in the hierarchy of

promotional grade pay as the practice in ACP Scheme as recommended by Bharatiya Pratiraksha Mazdoor Sangh letter No.BPMS/MACPS'64(7/3/M) dtd.16 Sep. 2013. However, Min. of Defence clarified that financial upgradation under MACPS would continue to be granted in the successive grade pay in the hierarchy of recommended revised pay band and grade pay as prescribed in the CCS(PP) Rules 2008 and not in the promotional hierarchy.

5. The respondents further mentioned that the MACPs envisages merely placement in the immediate next higher grade pay and therefore all the applicants have been granted benefits in accordance with the MACP guidelines. Therefore, the contention of the applicants does not merit any consideration.
6. The matter had been taken up by this Tribunal earlier and vide order dtd.13.4.2015, a direction was given that this matter was covered by the decision of the Principal Bench of the Tribunal and hence the applicants are entitled for the similar benefits.
7. The respondents filed Writ Petition No.47372-47384/2015(S-CAT) against the said order of the Tribunal and the Hon'ble High Court of Karnataka vide its order dtd.23.11.2015 referred to the contention of the petitioners who submitted that the matter is entirely different from the facts involved and the issue is not covered by the aforesaid judgment. Therefore, the matter was remanded back by the Hon'ble High Court for fresh consideration. Thereafter at the instance of the Tribunal, the respondents have filed an affidavit indicating the difference between the OA.No.1038/2010 filed by Shri Rajpal in Chandigarh Bench of this Tribunal and the present OA. They mentioned that Shri Rajpal has joined the post of Photocopier which was an isolated post with

OA.No.473-485/2014/CAT/Bangalore Bench
no promotional avenues and hence it was considered equated to LDC and Hindi Typist. As against the same, the applicants are part of regular hierarchy having promotional avenues as already mentioned in the reply statement. They have also mentioned that in a similar case between UOI vs. Babu Ram & Ors., the Hon'ble High Court of Punjab & Haryana in CWP No.24278/2013 dismissed the case in favour of Babu Ram & Ors. Against the same, the Govt. has filed an SLP No.23333/2014 before the Hon'ble Apex Court and the Hon'ble Apex Court passed an interim order and the matter is still pending for consideration. It was also mentioned in the affidavit filed by the respondents that pursuant to the Tribunal's order dtd.13.04.2015, they had issued an order granting 2nd MACP in the Grade Pay of Rs.4200 to the applicants vide order dtd.24.09.2015. However, the Principal Controller of Defence Accounts had returned the matter seeking order of implementation/acceptance from the Headquarters of Ministry of Defence. Thereafter the Writ Petition was filed before the Hon'ble High Court and the matter has been remanded back to the Tribunal.

8. The respondents have subsequently filed another memo saying that in a similar matter pertaining to an order passed by the Ernakulam Bench of the Tribunal and upheld by the Hon'ble High Court of Kerala, an SLP was filed wherein the Hon'ble Apex Court has stayed the operation of the impugned order. Hence all these matters are still pending for consideration by the Hon'ble Apex Court. They have also filed another memo enclosing therewith an order passed by the Ahmedabad Bench of the Tribunal on 16.10.2015 in OA.No.18/2015 and an order passed by the Calcutta Bench of the Tribunal dtd.28.04.2016 in OA.No.195/2014 wherein it was held that the MACP benefit shall be given in the hierarchy of next higher Grade Pay and not in Grade Pay of promotional hierarchy and had dismissed the OAs filed by the petitioners

therein. They have also referred to another order passed by this Tribunal dtd.14.10.2015 in OA.No.896/2014 wherein reference was made to the various issues pending in the Hon'ble Apex Court and it was decided that outcome of the said OA shall be subject to the outcome of the SLP pending before the Apex Court.

9. Heard the Learned Counsel for both the parties. The Learned Counsel for the applicants submitted that the case of the applicants is exactly identical to the case of Sri Rajpal in whose case the Chandigarh Bench of the Tribunal had passed the order. Though the post of Photocopier in which Sri Rajpal was appointed is an isolated one, he was allowed benefits treating it at par with the post of LDC. The applicants covered in the order of the Principal Bench of the Tribunal are LDC/UDC and are similarly placed as the present applicants. Therefore, the applicants are entitled to similar benefits as was allowed by the Tribunal earlier.

10. The Learned Counsel for the respondents, on the other hand, reiterated the submission made in the reply statement and also in the subsequent memos and submits that in several other cases the issue involving identical to this matter has been taken to the Hon'ble Supreme Court and there is stay of operation of the order. He also referred to an order of this Tribunal in OA.No.896/2014 wherein it was decided that outcome of the said OA shall be subject to the outcome of the SLP pending before the Apex Court. On a query made to him, he mentioned that the matter is still pending for consideration by the Hon'ble Apex Court and the order has not been given effect to in any of the cases. He also referred to a view taken by Ahmedabad Bench and Calcutta bench of the Tribunal contrary to the view taken by Chandigarh Bench and Principal Bench of the Tribunal.

11. We have carefully considered the facts of the case and submissions made by either side. On going through various judgments referred to by the applicants, it is quite clear that the case of the applicants is similar to that of the applicants in those cases. In the case of Sri Rajpal in whose case the Chandigarh Bench of the Tribunal passed an order giving MACP benefit in the promotional hierarchy and which was upheld by the Hon'ble High Court of Punjab and Haryana though he belonged to an isolated post, he was given benefit granting parity with that of LDC. In the order of the Principal Bench referred to by the applicants, the petitioners therein were similarly placed. So the point raised by the respondents that the case of the applicants is not identical to that of the applicants in those cases where benefits were allowed does not appear to be correct. It is clearly evident that the case of the applicants is similar to the case where benefits were allowed. However, the basic issue as to whether the MACP benefit has to be allowed in the next higher Grade Pay in terms of the MACP guidelines or in the promotional hierarchy, there have been differing views by different Benches. Moreover, it has been brought to our notice by the respondents that the Hon'ble Supreme Court in *SLP.No.10435/2014* in *Union of India vs. Babu Ram & Ors* arising out of the impugned order dtd.7.11.2013 in CWP.No.24279/2013 passed by the Hon'ble High Court of Punjab & Haryana has granted a stay. The Hon'ble Apex Court also granted stay in CC.No.8271/2014 converted to SLP.No.21803/2014 in the matter of *Union of India vs. M.V.Mohanan Nair* which pertains to the order of Ernakulam Bench of the Tribunal in OA.No.816/2012 which upheld by the Hon'ble High Court of Kerala regarding grant of MACP benefit in promotional hierarchy. The Hon'ble Apex Court had also tagged three other SLPs filed by Union of India in the matter identical namely *SLP.No.22181/2014* in *Union of India vs. Reeta Devi*,

SLP.No.23335/2014 in Union of India vs. O.P.Bhadani and another SLP CC No.10436/2014 in Union of India vs.Dhirender Singh & Ors.

12. Though all the applicants in the present case are similarly placed to that of Sri Rajpal in whose favour the order passed by the Chandigarh Bench and which was upheld by the High Court of Punjab & Haryana and applicants in OA.No.904/2014 where Principal Bench of this Tribunal passed similar order, we note that the primary issue as to whether the benefits under MACP will be allowed in the promotional hierarchy or in the next Grade Pay is still pending for adjudication before the Hon'ble Supreme Court in a number of similar cases. Therefore, we are of the view that it would be appropriate that the outcome of the present OA shall be subject to the final decision in the above mentioned SLPs. Therefore, we dispose of the present OAs with direction that the applicants shall be entitled to financial upgradation under MACP in terms of the decision by the Hon'ble Supreme Court in the above mentioned SLPs pending before it for adjudication.

13. The OAs are accordingly disposed of. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

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

/ps/

Annexures referred to by the applicants in OA.473-485/2014

Annexure-A1: ACP Scheme notified under OM dtd.9.8.1999

Annexure-A2: MACP Scheme notified under OM dtd.19.5.2009

Annexure-A3: Table showing the service particulars of applicants 1 to 13

Annexure-A4: Copy of the judgment dtd.19.10.2011 in CWP No.19387/2011 (O&M) rendered by Punjab and Haryana High Court

Annexure-A5: Copy of the order dtd.15.4.2013 in SLP (C)(CC)7467/2013

Annexure-A6: Copy of the Cat Principl Bench order dtd.26.11.2012 passed in OA.904/2012

Annexure-A7: Representation dtd.23.9.2013 of applicant No.1

Annexure-A8: Representation dtd.23.9.2013 of applicant No.2
 Annexure-A9: Representation dtd.23.9.2013 of applicant No.3
 Annexure-A10: Representation dtd.23.9.2013 of applicant No.4
 Annexure-A11: Representation dtd.23.9.2013 of applicant No.5
 Annexure-A12: Representation dtd.23.9.2013 of applicant No.6
 Annexure-A13: Representation dtd.23.9.2013 of applicant No.7
 Annexure-A14: Representation dtd.23.9.2013 of applicant No.8
 Annexure-A15: Representation dtd.23.9.2013 of applicant No.9
 Annexure-A16: Representation dtd.23.9.2013 of applicant No.10
 Annexure-A17: Representation dtd.23.9.2013 of applicant No.11
 Annexure-A18: Representation dtd.23.9.2013 of applicant No.12
 Annexure-A19: Representation dtd.23.9.2013 of applicant No.13
 Annexure-A20: Copy of the letter dtd.30.9.2013 from R-4 to R-3
 Annexure-A21: Copy of the letter dtd.10.10.2013 from R-3 to R-2
 Annexure-A22: Copy of the letter dtd.28.1.2014 from R-4 to R-3

Annexures with reply statement:

Annexure-R1: Copy of order granting ACP & MACP benefits to the applicants
 Annexure-R2: Copy of order granting 2nd ACP & 3rd MACP benefits to the applicants
 Annexure-R3: Copy of MACP Scheme
 Annexure-R4: Copy of letter dtd.30.09.2013
 Annexure-R5: Copy of letter dtd.10.10.2013
 Annexure-R6: Copy of letter dtd.08.11.2013
 Annexure-R7: Copy of letter dtd.06.03.2014

Annexures with affidavit filed by the respondents:

Annexure-1: Copy of the part II orders dtd.24.09.2015
 Annexure-2: Copy of the PCDA letter dtd.26.10.2015
 Annexure-3: Copy of the letter dtd.01.10.2015
 Annexure-4: Copy of the legal advice dtd.24.09.2015
 Annexure-5: Copy of order dtd.14.05.2015
 Annexure-6: Copy of order in CWP No.24279/2013
 Annexure-7: Copy of present status of SLP No.23333/2014

Documents supplied by the respondents in Memo dtd.19.02.2016:

Document No.1: Copy of SLP No.23333/2014 connected with SLP No.21803/2014
 along with annexures

Documents supplied by the respondents in Memo dtd.09.06.2016:

Document No.1: Copy of order dtd.14.05.2015 in SLP(C) No.23333/2014 passed by
 Hon'ble Apex Court
 Document No.2: Copy of the order dtd.14.10.2015 in OA.No.896/2014 passed by
 CAT, Bangalore Bench
 Document No.3: Copy of the order dtd.16.10.2015 in OA.No.18/2015 passed by
 CAT,
 Ahmedabad Bench

Documents supplied by the respondents in Memo dtd.06.01.2017:

Document No.1:Copy of order dtd.28.04.2016 in OA.No.195/2014 passed by CAT,
Calcutta Bench

Document No.2: Copy of OM dtd.17.05.2016 issued by DOPT
