

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
JABALPUR**1. Original Application No.200/00849/2016****2. Original Application No.200/00872/2016****3. Original Application No.200/00961/2016****4. Original Application No.200/01007/2016****5. Original Application No.200/00111/2017**Jabalpur, this Thursday, the 20th day of September, 2018**HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER**
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

1. Rajendra Kumar Vidyarthi, S/o Late Shri R.C. Vidyarthi, Working as Assistant Commissioner, Central Excise and Customs, DOB: 30.09.1958, R/o C-3, Tirupathi Enclave, Priyadarshini Nagar, Phase 1 Bhel Sangam, Bag Seonia, Hoshangabad Road, Bhopal 462023 (M.P.).

2. R.M. Mishra, S/o Late Shri Shiv Dutt Mishra, Working as Assistant Commissioner, Central Excise and Customs, Date of Birth: 29.06.1958, R/o 104, Ekta Apartment, Vishnupuri, Indore (M.P.) 452010.

3. Rita Joshi, D/o Late Shri N.D. Shukla, Working as Assistant Commissioner, Central Excise and Customs, DOB: 20.08.1956, R/o-E-3/243, Arera Colony, Bhopal – 462016 (M.P.).

4. Devendra Saxena, S/o Late Shri V.C. Saxena, Working as Assistant Commissioner, Central Excise and Customs, DOB: 18.11.1956, R/o-Gokal Vallabh, 33, Chhatrapati Shivaji Colony, Chunabhatti, Bhopal – 462016 (M.P.).

5. T.F. Toppo, S/o (Late) Shri Francis Toppo, Working as Assistant Commissioner, Central Excise and Customs, DOB: 19.03.1957, R/o-30, Rachna Vihar, Awadhpuri, Khajurikala, Bhopal – 462024 (M.P.).

6. Uday Kumar Banerji, S/o Shri Krishna Kamal Banerji, Working as Assistant Commissioner, Central Excise and Customs, DOB :

08.08.1956, R/o-157-A, Tulsi Nagar, Nipania, Indore – 452010 (M.P.).

-Applicants in OA 200/00849/2016

1. J.K. Nayak, S/o Shri M.P. Nayak, working as Assistant Commissioner, Central Excise and Customs, DOB 12.06.1960, R/o G-111A, Rameshwaram Colony, MR-4 Road, Ukhari Vivekanand Ward, Jabalpur – 482002 (M.P.).

2. Smt. Vanishree Damodaran Gautam, D/o Shri P. Damodaran, Working as Assistant Commissioner, Central Excise and Customs Date of Birth : 29.07.1957, R/o In front of Bade Ganpati, Kalkhedi Road Neelbad Bhadbhada Road, Bhopal – 462016 (M.P.).

3. Shankar Lal Khemchandani, S/o Shri G.M. Khemchandani, Working as Assistant Commissioner, Central Excise and Customs, DOB : 29.08.1958, R/o-Amrapali Enclave, Chunabhatti Bhopal – 462016 (M.P.).

-Applicants in OA 200/00872/2016

1. Ramesh R. Rahate, Date of Birth : 19.03.1956, S/o Shri Ramkrishna B. Rahate, Retired as Assistant Commissioner, Central Excise and Customs, R/o-283-A, Suryadev Nagar, Near Hawa Bunglaw, Indore – 452009 (M.P.).

2. Mohd. Moonis, Date of Birth: 01.01.1956, S/o Shri Mohd. Zaki Asghar, Retired as Assistant Commissioner, Central Excise and Customs, R/o 108, Ashoka Colony, Behind Digamber School, Manik Bagh Road, Indore – 452014 (M.P.).

3. Harsh Vardhan Sharma, Date of Birth: 19.04.1956, S/o Shri Vedant Sharma, Retired as Assistant Commissioner, Central Excise and Customs, R/o- 114, Lokmanya Nagar, Keshar Bagh Road, Indore – 452009 (M.P.)

-Applicants in OA 200/00961/2016

Rajesh Kumar Kashiv, S/o Shri Prem Naraya Kashiv, working as Assistant Commissioner, Central Excise and Customs, DOB 01.09.1957, R/o G-308, Sanjeevni Nagar, Jabalpur – 482002 (M.P.).

-Applicant in OA 200/01007/2016

R.S. Gupta, S/o Late V.P. Gupta, Assistant Commissioner, Central Excise and Customs, DOB 01.07.1958, R/o Opposite Jyoti School, Kailaspuri Mathpara, Raipur – 492001 (C.G.)

-Applicant in OA 200/00111/2017

(By Advocate – Shri Vijay Tripathi)

V e r s u s

1. Union of India, Through its Secretary, Ministry of Finance, Department of Revenue, New Delhi – 110001.

2. The Chairman, Central Board of Excise and Customs, North Block, New Delhi – 110001.

3. The Secretary, Ministry of Personnel, Public Grievance & Pension, New Delhi – 110001.

4. The Principal Chief Controller of Accounts, Central Board of Excise & Customs, AGCR Building, 1st Floor, New Delhi – 110002.

5. The Principal Chief Commissioner, Central Excise & Customs, Bhopal Zone, 48, Administrative Area, Hoshangabad Road, Bhopal 462011 (M.P.).

6. The Pay & Accounts Officer, Central Excise and Customs, Block No.2, Paryawas Bhawan, Bhopal – 462011 (M.P.).

- Common Respondents in all the OAs

7. The Pay & Accounts Officer, Central Excise and Customs, Manikbagh Palace, Indore (M.P.) 452010

**- Respondent No.7 in OA 200/00849/2016,
OA 200/00961/2016 & OA 200/0011/2017**

(By Advocate – Shri Himanshu Shrivastava)

(Date of reserving order : 14.08.2018)

C O M M O N O R D E R

By Ramesh Singh Thakur, JM.

The applicants are aggrieved by the order dated 20.06.2016

(Annexure A-1), whereby it has been clarified that the non-

functional scale in Grade Pay of Rs.5400/- in PB-2 shall be treated as a financial upgradation under the MACP Scheme. They are also challenging the orders dated 04.07.2016 (Annexure A-2) and 11.07.2016 (Annexure A-3), whereby it has been instructed to regularize the case of grant of MACP in Grade Pay of Rs.5400/- PB-2 to those Superintendents/Officers who have been granted the benefit of non-functional grade and the excess payment made to the applicants has been ordered to be recovered. Since, the issue involved in all these Original Applications is common and identical, hence, all the five OAs are being disposed of by way of this common order. For the purpose of this order, reference is being made to the averments made and the documents annexed in Original Application No.200/00849/2016.

2. The applicants have sought for the following reliefs:

- “(8.1) Summon the entire relevant record from the possession of respondents for its kind perusal;
- (8.2) Upon holding that the 3rd promotion/up-gradation granted to the applicants in the pay scale of Rs.16,600-39,100/- + G.P. of Rs.6,600/- is just and proper ; quash and set aside the order dated 20.06.2016 (Annexure-A/1), order dated 04.07.2016 (Annexure-A/2) and order dated 11.07.2016 (Annexure-A/3) with all consequential benefit;
- (8.3) Any other order/orders, direction/directions may also be passed;
- (8.4) Award cost of the litigation to the applicant.”

3. The applicants were appointed as Inspectors in the respondent department. Thereafter, they were promoted as Superintendent in the pay scale of Rs.6,500-10,500/-. The applicants were granted 2nd upgradation under ACP scheme after completion of 24 years' service as per the recommendations of the 5th Central Pay Commission. Since the applicants have secured only one promotion during their service career prior to 01.09.2008, they were granted 3rd financial upgradation under MACP scheme as per the recommendations of the 6th CPC in the Grade Pay of Rs.6,600/-. The applicants were given regular promotion as Assistant Commissioner, Central Excise vide order dated 22.10.2014 in the Pay Scale of Rs.15,600-39,100/- (PB 3) with Grade Pay of Rs.6,600/-.

4. It has been submitted that the Superintendents drawing pay in the Pay Band Rs.9,300-34,800/- + G.P. of Rs.4,800/- (PB 2), were to automatically get Grade Pay of Rs.5,400/- after completion of four years of service as Superintendent, as per recommendations of the 6th Central Pay Commission considering the acute stagnation in the cadre. Further the Grade Pay of Superintendent and non-functional grade is the same i.e. Rs.5,400/-. However, the Pay Band of Superintendent is Rs.9,300-34,800/- + G.P. of Rs.5,400/-

(PB 2) and Pay Band of Superintendent (Non-functional Grade) is Rs.15,600-39,100/- + G.P. of Rs.5,400 (PB 3). It is the case of the applicants that since the Grade Pay of both the posts is same, therefore, grant of Non-functional Grade pay, cannot be counted as regular promotion as there is no change in the pay of the employees and also the nature of duties performed by the officers while holding the post of Superintendent.

5. The applicants submitted that they have been given regular promotion as Superintendent in PB 2 and thereafter granted Non-functional Grade in PB 3, however, the respondents are treating the Non-functional Grade of the applicants as 3rd promotion by applying Para 8.1 of the MACP scheme, which reads as under:

“8.1 Consequent upon the implementation of the Sixth CPC’s recommendations, grade pay of Rs. 5400 is now in two pay bands viz., PB-2 and PB-3. The grade pay of Rs. 5400 in PB-2 and Rs.5400 in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under MACP Scheme.”

6. It has been further submitted that after issuance of the OM dated 19.05.2009, whereby the MACP Scheme was introduced, the DoP&T has issued a clarification dated 29.09.2009 (Annexure A-10), whereby Para 8.1 of Annexure-I of MACP Scheme has been clarified and Assistant Commissioner (JTS) in the Pay Scale of

Rs.8,000-12,500/- is treated as Group-A one and 3rd financial upgradation would be granted in the Grade Pay of Rs.6,600/-. Therefore, as per this clarification dated 29.09.2009, the applicants are entitled to get 3rd upgradation under MACP Scheme in the Grade Pay of Rs.6,600/-.

7. The applicants have further submitted that one similarly placed person R. Chandrasekaran approached the Hon'ble High Court of Madras by filing Writ Petition No.19024 of 2014, challenging the orders passed by the Madras Bench of this Tribunal in Original Application No.675 of 2013, decided on 24.02.2014. The said W.P was allowed by the Hon'ble High Court vide its order dated 08.12.2014 and the order passed by the Hon'ble High Court has also been implemented by the respondents therein vide order dated 26.05.2015 (Annexure A-9).

8. The respondents have filed their reply and have not disputed the factual accuracy. It has been submitted that the applicants have been wrongly granted 3rd financial upgradation in PB-3, Grade Pay Rs.6,600/- in the year 2012 in absence of suitable clarifications. The first clarification from Central Board of Excise and Customs was received vide order dated 06.05.2013 and 04.06.2014 regarding the Non-functional upgradation granted after four years

of continuous service in the grade of Superintendent and it has been directed to treat the same as one upgradation under the MACP Scheme in terms of Para 8.1 of Annexure-I of OM dated 19.05.2009. Further, the clarification issued by the DoP&T is unambiguous in nature, as Para 8.1 of OM dated 19.05.2009 makes it clear that Non-functional upgradation in the Grade Pay of Rs.5,400/- in PB 2 and PB 3 shall be treated separately.

9. The respondents have contended that the matter has been dealt by DoP&T in consultation with Department of Expenditure, Ministry of Finance, and accordingly, the Board has issued the order dated 20.06.2016 (Annexure A-1), wherein it has been decided to count Non-functional upgradation as one financial upgradation under MACP Scheme. The applicants have availed three benefits, i.e. (i) promotion as Superintendent, (ii) Non-functional upgradation on 01.01.2006 and (iii) 2nd ACP in Grade Pay Rs.5,400/-. Thus, they have wrongly been granted 3rd financial upgradation in PB-3, G.P. Rs.6,600/- in the year 2012. Further, MACP scheme guarantees three financial upgradation in hierarchy of devised grade pay structure as per 6th CPC and not three promotions. It has also been submitted that the Board vide clarification dated 20.06.2016 has instructed that Non-functional

upgradation granted in such cases will be treated as a financial benefit under MACP Scheme and it was directed to defend all such cases arising out of case of Shri R. Chandrasekharan.

10. We have heard the learned counsel for the parties and also gone through the pleadings and documents available on record.

11. Learned counsel for the applicants placed reliance on a decision passed by the coordinate Mumbai Bench of this Tribunal in Original Application No.633/2015, dated 21.06.2017 (Prakash Vasant Ratnaparkhi & Ors. vs. The Union of India & Ors.), as well as the judgment of Hon'ble High Court of Madras in Writ Petition Nos. 33946, 24602 and 27798 of 2014 dated 14.02.2017 and the judgment of Hon'ble High Court of Delhi at New Delhi in W.P.(C) 9357/2016 dated 20.12.2017.

12. The question which arose for our consideration is whether the Non-functional scale in Grade Pay of Rs.5400 in PB-2 granted to the applicants should be accounted as a promotion or ACP as far as MACPS is concerned? If this upgradation of grade pay is accounted as a promotion, obviously one of the three assured upgradations eligible under MACPS will be curtailed.

13. We may note that the issue involved in this Original Application has already been considered and decided by the Hon'ble High Court of Madras in the case of **R. Chandrasekaran** (supra), wherein it has been held as under:

“**16.** The Customs and Central Excise Department has granted benefits of MACP to the employees like petitioner herein without taking into account the financial upgradation given on ‘non-functional scale’. The departments have earlier maintained that only functional promotions would be counted for the purpose of extending the benefits of ACPS. The employees were all given benefits by taking a position that there was no provision for counting ‘non-functional scale’ for the purpose of ACPS. Subsequently, on the basis of further clarification the benefits were all withdrawn. This resulted in filing several original applications before the Central Administrative Tribunal. The Central Administrative Tribunal, Chandigarh Bench rejected the contentions taken by the respondent in O.A. No.1038 of 2010. The said decision was upheld by the High Court of Punjab and Haryana. Even thereafter several orders were passed by the respondents. We have considered similar writ petitions. In case the concerned departments took earnest efforts to codify all the circulars issued earlier and to issue a fresh circular explaining the nature and scope of MACPS and as to whether non-functional scale would be counted for the purpose of ACPS, it would be possible to avoid cases like this and future cases that are bound to come. We are therefore of the view that instead of deciding the matter one way or the other it would be in the interest of all the parties to direct the Department of Personnel, Public Grievances and Pensions to look into the issue and to take a decision in the light of MACP Scheme.

17. Since the Central Administrative Tribunal has taken a decision not withstanding the claim made by the petitioner and in view of our decision to direct the Department of Personnel, Public Grievances and Pensions to consider the issue once again, we set aside the order passed by the Central Administrative Tribunal dated 24 February 2014 in O.A.No.675 of 2013 and remit the matter to the Department of Personnel, Public Grievances and Pensions for fresh consideration. The Department of Personnel, Public Grievances and Pensions is directed to consider the issue in extenso in the light of the provisions of MACP Scheme and the benefits given to the employees like the petitioner to count the non-functional scale for the purpose of ACPS. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this writ petition.”

14. It is pertinent to mention that recently, the coordinate Bench at Mumbai in the case of **Prakash Vasant Ratnaparkhi** (supra), has dealt with this issue. While allowing the Original Application, it was observed as under:-

“18. We note that there is no reference that the order of the Tribunals in the above OAs at paras 15, 16 and 17 of this order have been challenged by either party. The orders were passed in 2015 and 2016 and there is no reference, specifically, to the status of compliance of the orders in the OAs. The only development is that a general reference (post judgment of the Hon’ble High Court of Madras) is pending with DOPT since 2015.

19. The Tribunal is led to believe that the respondents have not been quick to act or obtain decision on the directions of the Tribunal in the said OAs and the matter

appears to be pending even as late as June, 2017 when the present OA is being heard regarding 11 more similarly situated applicants. A waiting line/queue of pending orders has been created with a line of same orders for disposal in similar matters. The queue has practically not moved forward and remained static since 2015. Hence, we are not inclined to permit respondents to take any further umbrage by merely directing them to pass a reasoned and speaking order, as in the earlier OAs, so long as it is not denied by respondents, anywhere in the OA that present applicants are dissimilarly situated to that of Shri R.Chandrasekaran. The only view taken is that the reference is pending in DOPT in the light of order in R.Chandrasekaran's case (supra).

20. Further, a view has already been taken after due Inter-Ministerial consultation following the Judgment of the Hon'ble High Court of Madras. Inter-Ministerial consultations means that the decision is not a decision in personam, but a decision in rem. Hence, having complied with the order of the Hon'ble High Court of Madras, the Judgment of the Hon'ble High Court being a judgment in Rem leaving no scope for further dilly dallying on respondents to pass a similar order in favour of present applicants not distinguished in the OA by respondents as being dissimilar. The Judgment of the Hon'ble High Court of Madras (and Hon'ble High Court of Punjab and Haryana, as referred in the order of the Hon'ble High Court of Madras) has attained finality. Any similar direction in the light of earlier OAs is not warranted, in such a situation, in the interest of justice and resolving and not keeping disputes pending, where they qualify to be disposed of finally.

21. It may be that applicants in this OA consist of retired or serving officers. But the cause of action remained the same in case of all the applicants. In any case, the joint

petition was allowed by this Tribunal and this order was never challenged at the appropriate time by the respondents.

22. In view of the above the impugned order is set aside, as the prayer clause 8 (a) of this OA is liable to be allowed. The respondents are directed to comply with the orders within a period of two months from the date of receipt of certified copy of this order in all the similarly situated persons among the eleven applicants. Since the matter is pending with DPT based on a bonafide belief that DOPT would issue clarification/decision, no interest is payable.”

15. It is the case of the applicants that they are similarly situated to that of R. Chandrasekaran and are also entitled for the similar benefit, as has been extended to him. The applicants, in Para 4.9 of the O.A have stated that after the order passed by the Hon’ble Madras High Court in the case of R. Chandrasekaran, the respondents issued an order dated 26.05.2015, whereby, it was directed to implement the order passed by the Hon’ble Madras High Court. Though the respondents have stated that vide the impugned order dated 20.06.2016 (Annexure A-1), they have withdrawn their earlier order dated 26.05.2015 in the case of R. Chandrasekaran and a decision has been taken to defend the cases, emerging out of the case of R. Chandrasekaran, however, there is no denial regarding the applicants being similarly situated to that of R. Chandrasekaran. Since, the judgment passed by the Hon’ble High Court of Madras in the case of **R. Chandrasekaran** (supra)

1. Original Application No.200/00849/2016
2. Original Application No.200/00872/2016
3. Original Application No.200/00961/2016
4. Original Application No.200/01007/2016
5. Original Application No.200/00111/2017

is judgment in rem, as has been held by the coordinate Bench at Mumbai in the case of **Prakash Vasant Ratnaparkhi** (supra) and there is no such denial that the applicants are not dissimilar to that of R. Chandrasekaran, therefore, we hold that the applicants are also entitled for the similar benefit, as has been extended to R. Chandrasekaran.

16. In the result, all these OAs are allowed. The impugned orders dated 20.06.2016 (Annexure A-1), 04.07.2016 (Annexure A-2) and 11.07.2016 (Annexure A-3) are quashed and set aside with all consequential benefits.. No costs.

17. A copy of this order be placed in the file of other four connected OAs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-