



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 620 of 2011

Present: Hon'ble Ms. Jasmine Ahmed, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

NARENDRA KR. NAMMI & ANR.

VS

UNION OF INDIA & ORS.

For the applicant : Mr.A.Chakraborty, counsel

For the respondents: Mr.S.Bhattacharya, counsel

Heard on : 09.02.2017.

Order on : 10.02.2017.

O R D E R

Ms. Jaya Das Gupta, A.M.

The applicants in this case have approached CAT under Section 19 of the A.T. Act seeking the following reliefs :

- a) Speaking order dated 9.4.11 issued by Workshop Personnel Officer, S.E. Railway, Kharagpur in respect of the applicant is bad in law and therefore the same may be quashed;
- b) Office order dated 12.2.11 issued in respect of the applicants are not tenable in the eye of law and as such the same should be quashed.
- c) An order do issue directing the respondents to grant 2nd MACP and to fix the pay of the applicants in the post of JCMA in the scale of Rs.9300-34,800/- with Grade Pay of Rs.4200/- and to grant him all arrears.
- d) Leave may be granted to file this original application jointly under Rule 4(5)(a) of CAT (Procedure) Rules, 1987.

2. We noticed that both the applicants have approached CAT making a single application. On considering the fact that the case has been filed long

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ago in the year 2011 and has already come in the hearing list, we have heard this matter on merit.

3. It is the case of the applicants that at present they are working as Laboratory Assistants. The applicant No.2 was initially appointed as Khalasi w.e.f. 18.12.90 in Diesel POH LGP/Workshop. He was promoted to the post of Laboratory Assistant w.e.f. 16.12.95. The applicant No.1 was initially appointed on 25.11.90 in Electrical PHO Workshop, KGP, S.E. Railway as Khalasi. He was promoted to the post of Laboratory Assistant w.e.f. 13.3.93.

It is the contention of the applicants that both of them have completed 20 years of service from the date of appointment as Khalasi. The applicants made a representation before the authority concerned that they are entitled to get benefits of Rs.5000-8000/- and their pay is to be fixed at Rs.4200/- instead of Rs.2400/-. They also stated that promotional post of Laboratory Assistant is JCMA (Jr. Chemical & Metallurgical Assistant). Since they have not been granted promotion to the post of JCMA their pay should be fixed in the pay scale of JCMA. The authority concerned was requested to grant the pay scale of Rs.5000-8000/- and their Grade Pay should be Rs.4200/-.

It is their further contention that the authority concerned passed a speaking order on 9.6.11 in respect of applicant No.2 wherein the respondents have stated that he is not entitled to ACP because he did not complete 20 years of service. ^{But} in view of introduction of MACP he will get the benefit of one upgradation under MACP i.e. 2nd MACP since he has already got one promotion.

They have further contended that consequent upon the implementation of the 5th CPC recommendation a new 3 tier grade has been

207

introduced vide office order dated 17.8.98 which came into effect from 1.8.98 where the Laboratory Assistants have been placed in 3 different scales namely Rs.3050-4590/-, Rs.4000-6000/- and Rs.4500-7000/-. They have also submitted that they are similarly placed as the applicants in the case of S.K.Gupta & Ors. -vs- Union of India & Ors. (OA 2750/04) before the Principal Bench of CAT at New Delhi and in that order it was held that new pay scales are for fresh recruits and the applicants who are working as Laboratory Assistant before introduction of the circular dated 17.8.98 are entitled to get benefit of pay scale of Rs.5000-8000/-. Therefore they have approached the CAT for redressal of their grievance since they have not been awarded the Grade Pay of Rs.4200/-.

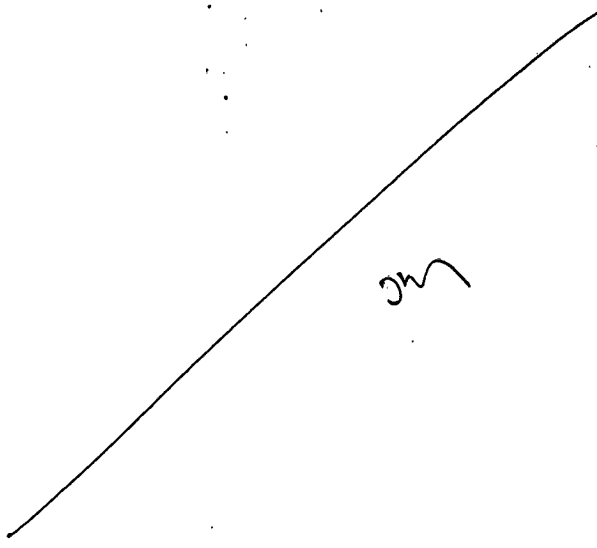
4. Per contra it is the contention of the respondent authorities that the Railway Board vide letter dated 17.8.98 contained in S.E. Railway's Estt. Srl.No. 2002/98 introduced additional pay scales of certain categories as per the recommendation of the 5th CPC w.e.f. 1.8.98. From 1.8.98 the Laboratory Assistants who were existing in the pre-revised scale of Rs.3200-4900/- were placed in 3 different scales as follows :

Grade III - Rs.3050-4590/- (70%)

Grade II - Rs.4000-6000/- (20%)

Grade I - Rs.4500-7000/- (10%)

The above Estt. Srl. Mentions that all regular Laboratory assistants who were in the scale of Rs.975-1540/- (pre-revised) as on 31.12.95 will be eligible for being considered for promotion to the post of JCMA (Rs.5000-8000/-) subject to availability of posts and fulfilment of other conditions



without reference to usual condition of residency period of 2 years in each of the scales of Rs.4000-6000/- and Rs.4500-7000/-.

They have further submitted that applicant No.2 and some other employees of Kharagpur had earlier filed OA 2192/10 before the CAT, Calcutta Bench and prayed for Rs.5000-8000/- under ACP and the said OA was disposed of on 23.11.10 with a direction to pass a reasoned and speaking order within 3 months. Before passing the speaking order an order dated 12.2.11 was issued in favour of 15 staff including the applicants by granting 2nd MACP in the Grade Pay of Rs.4200/- in the Pay Band Rs.9300-34,800/- but this was withdrawn as subsequently it was realised that the said office order was wrongly issued without going through Railway Board's instruction on MACP in Estt. Srl. No. 120/09. As per the said Estt. Srl. No. 120/09 the applicants were entitled to Grade Pay of Rs.2400/- in the Pay Band of Rs.5200-20,200/- instead of Grade Pay of Rs.4200/- in the scale of Rs.9300-34,800/- and accordingly the mistake was rectified by grant of Grade Pay of Rs.2400/-. On introduction of 6th CPC the replacement pay of the Laboratory Assistant from 1.1.06 was placed in the Pay Band of Rs.5200-20,200/- in the Grade Pay of Rs.2000/-. Therefore according to the respondents the OA lacks merit and should be dismissed.

5. Heard both the Id. Counsels and consulted the records.

6. The applicant No.1 Narendra Kumar Nammi was appointed as Khalasi on 25.11.90 in the scale of Rs.750-940/- (4th CPC) and thereafter promoted to the post of Laboratory Assistant w.e.f. 13.3.93 in the pay scale of Rsw.975-1540/- (4th CPC). The applicant No.2 P.K.S.P.Rao was appointed as

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Khalasi on 18.2.90 and promoted to the post of Laboratory Assistant w.e.f. 16.12.95 in the scale of Rs.975-1540/- (4th CPC).

The applicants in this case wants to take the assistance of the judgment of CAT Principal Bench in OA 2750/04 which was dated 26.8.05 as the applicants in the present case felt they are similarly situated that the applicants in OA 2750/04.

6. On going through Annexure A/7 it is apparent that the applicants of OA 2750/04 are not similarly circumstanced as the applicants in the present OA. The applicants in OA 2750/04 were appointed and promoted on the following dates :

Name of the applicant	Dt. Of appointment (khalasi)	Date of promotion as Laboratory Assistant
S.K.Gupta	9.4.74	1977
Mrinal Kr. Misra	6.8.51	1978
K.K.Dutta	30.4.77	1985
Raghubir Singh	26.12.74	1980

The ACP scheme was effective from 9.8.99 to 31.8.08 and the MACP scheme came into existence on 1.9.08. It will be amply clear that all the above applicants completed 24 years of service before 31.8.08 and having got one promotion to the post of Laboratory Assistant they were eligible for the 2nd ACP after completion of 24 years which was extended to them as per CAT's order. However, in the present case the applicant No.1 joined service on 25.11.90 and having got one promotion, completed 24 years of service on 25.11.14 by which time the ACP scheme has been withdrawn and the MACP scheme was introduced. Similarly the 2nd

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applicant completed 24 years of service on 18.12.14 and having got one promotion will not be entitled to any ACP benefit but the 2nd MACP benefit.

7. The applicants were not promoted to the post of JCMA. They got the replacement scale of Rs.5200-20,200/- with Grade Pay of Rs.2000/- w.e.f. 1.1.06 as per recommendation of 6th CPC. Therefore on completion of 20 years of service from the date of appointment they will get 2nd MACP benefit to the next Grade Pay which is Rs.2400/- and not Rs.4200/-. Rs.4200/- is the Grade Pay of the promotional post and which is payable only on promotion. This is as per para 2 of Annexure A/1 of the MACP scheme which is extracted below:

"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 I, 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/organization will be given only at the time of regular promotion."

8. The MACP scheme and the ACP scheme differ in the stipulation as, as per the ACP scheme upgradation is given to the next higher pay scale while under the MACP scheme upgradation is given to the next higher Grade Pay. **The two schemes are different as the ACP scheme deals with pay scales and MACP scheme deals with pay band and Grade Pay.** The Delhi High Court while arbitrating on the question whether the hierarchy contemplated by MACP is immediately in the next higher Grade Pay or is in the Grade Pay of next above Pay Band have concluded in WP(C) 3420/2010 (R.S.Singar - vs- Union of India & Ors.) decided on 4.4.11 that the MACP scheme is

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limited to the next higher Grade Pay and not to the Grade Pay of the next above Pay Band. CAT, Calcutta Bench also in OA 195/14 pronounced on 28.4.16 ordered that MACP benefits would be given in the hierarchy of the next higher Grade Pay and not in the Grade Pay of promotional hierarchy which will be payable on actual promotion. In this case the applicants were not promoted to the post of JCMA as per records. Relevant extracts of our order in OA 195/2014 is set out below :

"6(d) The applicant refers to decision of various court cases for advancing his case.

- (i) The findings of C.A.T., Chandigarh Bench in O.A.1038/CH/2010 decided on 31.05.2011 in the case of Raj Pal vs. Union of India & Ors. wherein the applicant was working as a photocopier which was an isolated post. Para 15 of the judgment is set out below:-

"15. Be that as it may, the principle enunciated and settled by the Tribunals/High Court for grant of ACP cannot be changed and the same principle would apply for grant of MACP to him. The only difference is the number of years required to be completed. We find no justification to take a different view of the matter."

C.A.T., Chandigarh Bench allowed the prayer of the applicant by granting him pay in a hierarchy of post which was drawn on equation with that of Hindi Typist and LDC as Raj Pal was a Photocopier which was an isolated post.

However, the applicants in the present case belong to a definite promotional hierarchy and their posts are not isolated posts.

This view of C.A.T., Chandigarh Bench was upheld by the Punjab and Haryana High court in CWPNo.19387/2011 delivered on 19.10.2011. The Hon'ble High Court of Punjab and Haryana while agreeing with the order passed by the Chandigarh bench of the Tribunal commented that "Under the ACP Scheme of 1999, the financial upgradations were to be granted by upon completion of 12 years and 24 years of regular service whereas under the U MACP Scheme such financial upgradations are envisaged by the completion of 10/20 and 30 0 years of service. The contentions raised on behalf of the petitioners if accepted, would defeat the very objective for which such schemes have been introduced."

- (ii) The Principal Bench of C.A.T. in O.A.904/2012 in the case of Sanjay Kumar, UDC & Ors. passed an order on 26th November, 2012 based on the findings of the C.A.T., Chandigarh Bench which was upheld by the Hon'ble High Court of Punjab and Haryana, i.e. MACP benefits in the promotional hierarchy.

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- (iii) The Guwahati Bench of C.A.T. in O.A. No.040/000052/2014 in the case of Sri Narayan Kalita, Assistant Engineer(Electrical) and Ors. vs. Union of India & Ors. passed and delivered an order on 25.06.2014 based on the findings of C.A.T., Chandigarh Bench in O.A.1038/2010 and Hon'ble High Court of Punjab & Haryana in CWP 19387/2011 by allowing the MACP benefit in the next promotional hierarchy of the Executive Engineer.

(e)(i) We may now examine the above decisions of the benches of C.A.T. and the Punjab and Haryana High Court. The decisions taken in O.A.1038/CH/2010 by the Chandigarh Bench of C.A.T. which was upheld by the Punjab and Haryana High Court in CWP 19387/2011 was dismissed by the Hon'ble Apex Court not on the basis of merit but because of Hon'ble Apex Court did not condone the delay of filing the case in the Apex Court

- (ii) The decisions taken by the Punjab and Haryana High Court in CWP 19387/2011 was refuted by the Hon'ble Delhi High Court in WP(C) No.4662/2013 delivered on 26.07.2013 which is as follows:-

"The decision of the Punjab & Haryana High Court in WP(C) No.19387/2011 has prima facie proceeded on a wrong assumption that the only difference between the ACP and MACP was to remove the stagnation in the sense that under ACP Scheme two financial up gradation upon rendering 12 and 24 years of service were envisaged and under MACP three financial up gradations after rendering 10,20 and 30 years were envisaged. The Punjab & Haryana High Court did not take WP(C) No.4662/2013 into account that MACP was introduced on the recommendation of the 6thCPC where in place of hithertofore concept of pay 0 scale came to be replaced by Pay Band and GP."

The order passed by the Principal Bench of C.A.T. in O.A.904/2014 (Sanjay Singh & Ors. vs. Union of India & Ors.) was stayed by the Hon'ble Delhi High Court in W.PO4662/2013 delivered on 26.07.2013.

- (iv) The order passed by Guwahati Bench of C.A.T. regarding giving MACP benefits in the next promotional grade has not attained any finality because of the stay of the Delhi High Court in W.P.(C)4662/2013.
- (v) A recent Office Memorandum No.22034/04/2013-Estt.(D) has been issued by the Ministry of Personnel, Public Grievances and Pension, DOP&T, Government of India on 20.01.2016 on the subject matter of court cases in various Ministries/Departments/Organisations for grant of MACP benefits in the promotional hierarchy, relevant portion of which is extracted below:-

"The undersigned is directed to forward herewith a copy of the stay order dated 08.08.2014 passed by Hon'ble Supreme Court in CC No. 8271/2014 (converted to SLP No. 21803/2014) in the matter of U01 Vs. Shri M.V. Mohanan Nair on the order of the Hon'ble High Court of Kerala in OP(CAT) No. 2000/2013(Z) regarding grant of MACP benefit in the promotional hierarchy, for information".

The above case details are given below:-

C.A.T., Ernakulam Bench in the case of M.V. Mohanan Nair vs. Union of India passed an order on 29th of January, 2013 in O.A.816 of 2012 depending upon the decision of C.A.T., Chandigarh Bench as also that of Principal Bench in the matter of Ved Prakash. Here also, the MACP

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benefits were given by allowing the Grade Pay in the next promotional scale. This view of C.A.T., Ernakulam was upheld by Hon'ble High Court of Kerala, Ernakulam in O.P. (CAT) No. 2000/2013(Z) in Union of India & Ors. vs. M.V. Mohanan Nair, Photocopier of C.A.T., Ernakulam Bench. The Hon'ble High Court of Kerala, Ernakulam on 24.6.2013 agreed with the findings of CAT, Ernakulam. This view was stayed by the Hon'ble Apex Court vide DOP&T's order supra.

Thus it appears that the Hon'ble Supreme Court in Special Leave Appeal No.8271/2014 arising out of the impugned final judgment and order, dated 24.6.2013 in O.P. (CAT) No. 2000 of 2013 passed by the Hon'ble High Court of Kerala at Ernakulam in case of Union of India & Ors. -vs- M.V.Mohanan Nair stayed the order of Hon'ble High Court on 8.8.2014.

Thus we see that in the cases alluded to by the applicants no final view has been given.

On the other hand, the Delhi High Court in WP(C) No. 3420 of 2010 (R.S.Sengor and others v. Union of India and others) has passed an order on 4th April, 2011 in which the final decision has been taken by the Hon'ble High Court "that to put it pithily, the MACPS Scheme requires the hierarchy of the Grade Pays to be adhered to and not the Grade Pay in the hierarchy of Posts.

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(h) The Department of Personnel & Training vide. No.22034/04/2013-Estt.(D) dated 01.03.2016 has issued an Office Memorandum on the subject matter of court cases in various Ministries/Departments/Organisations for grant of MACP benefits in the promotional hierarchy, relevant extract is cited below :-

"In continuation of DOP&T's earlier O.M. of even No. dated 20.01.2016 on the above mentioned subject, the undersigned was directed to forward a copy of the decision of the Hon'ble C.A.T., Ahmedabad Bench in O.A.No.120/000018/2015 filed by Manubhai Bhagwanji Rathod vs. Union of India & Ors. whereby demand of the applicant for MACP in the promotional hierarchy has been dismissed."

It would be worthwhile to quote the above judgment which has been passed very recently for coming to the conclusion in the present matter:-

"The grievance of the applicant in this O.A relates to non granting of Grade Pay of Rs. 5400/- in Pay Band of Rs. 15600-39100 (PB-3) on being extended the benefit of 2nd financial upgradation under the Modified Assured Career Progression (MACP) Scheme. According to the applicant, on granting 2nd financial upgradation under the O MACP Scheme his pay shall be fixed in the next Grade Pay of Rs. 5400/- in Pay Band of Rs. 15600-39100 (PB-3).

2. The facts stated by the applicant in support of his claim in brief are that he entered into service in the National Water Development Agency as Supervisor on 24.03.1986 in the pay scale of Rs. 1400-2300 as per the 4th Central Pay Commission. The applicant was thereafter promoted as

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Assistant Engineer by order dated 30.04.1996 in the pre-revised scale of Rs. 6500-10500 which was subsequently revised to Rs. 9300- 34800 with Grade Pay of Rs. 4600/- (as per 6th CPC). The applicant submits that as per the existing promotional hierarchy in the department, his next promotional post is the Assistant Executive Engineer in the Pay Band of Rs. 15600- 39100 (PB-3) with Grade Pay of Rs. 5400/-.

3. On the basis of the 6th Central Pay Commission, the Government revised the ACP Scheme and introduced a new Scheme called, Modified Assured Career Progression Scheme (MACP Scheme) for the Central Government civilian employees by issuing Office Memorandum No. 35034/3/2008-Estt.(D) dated 19.05.2009, effective from 01.09.2008. The said MACP provides for grant of three financial upgradations at intervals of 10, 20 and 30 years of continuous regular service. Pursuant to the MACP Scheme, the applicant was given 2nd financial upgradation with effect from 01.09.2008 in Pay Band of Rs. 9300-34800 (PB-2) with Grade Pay of Rs. 4800/-. The next O promotional post of Assistant Executive Engineer carries the Grade Pay of Rs. 5400/- in Pay Band of Rs. 15600-39100 (PB-3). According to the applicant, on granting the Qbenefit of 2nd financial upgradation under the MACP Scheme by order dated 0 10.06.2013 vide Annexure A-4, his Grade Pay should have been fixed at Rs. 5400/- instead of Grade Pay of Rs. 4800/-

4. The applicant submits that the issue as to whether the Grade Pay should be O given on the next promotional post in the hierarchy/cadre or not while granting financial upgradation under MACP Scheme, was the subject matter before the Chandigarh Bench and the Principal Bench of this Tribunal wherein it was held that financial upgradation should be given in the next promotional post. By placing reliance upon the O O 9 orders of the Chandigarh Bench of the Tribunal dated 31.05.2011 in O.A. No. 1038/CH/2010 (Raj Pal vs. Union of India & Others) and the Principal Bench of the Tribunal dated 26.11.2012 in O.A. No. 904/2012 (Sanjay Kumar and Others vs. The Secretary Ministry of Defence, New Delhi and Others), the applicant submitted a representation dated 17.04.2014 vide Annexure A-6 to the Director General, National Water Development Agency, New Delhi, requesting to extend similar treatment and to revise his Grade Pay consequent upon granting the benefit of 2nd financial upgradation under the MACP Scheme, which came to be rejected by order dated 19th August, 2014 vide Annexure A-1. Being aggrieved by the action on the part of the respondents in not giving him the Grade Pay of Rs. 5400/- on extending the benefit of 2nd financial upgradation, the applicant presented the instant O.A seeking a declaration that the applicant is entitled to get the Grade Pay of Rs. 5400/- in Pay Band Rs. 15000-39100 (PB-3) on being granted the 2nd financial upgradation under the MACP Scheme vide order dated 10.06.2013 vide Annexure A-4 and for a direction to the respondents to grant the Grade Pay of Rs. 5400/- in Pay Band Rs. 15600-39100 (PB-3) on being granted the 2nd financial upgradation under the MACP Scheme. He further prayed for a direction to fix his pay as requested above and grant the arrears of difference of pay.

5. Pursuant to the notice of the O.A, the respondents entered appearance. Today, though the matter stands posted for reply of the respondents, the learned counsel for the respondents, Mr. B. Mishra, submits that in view of

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the recent judgement of the Honble High Court of Delhi on the present issue and by applying the same, the O.A can be disposed of on the same lines.

6. By placing reliance upon the judgements of the Honble High Court of Delhi dated 04.04.2011 in W.P.(C) No. 3420/2010 in the case of R.S. Sengor & Others v. Union of India and Others and dated 17.03.2015 in W.P.(C) No. 5082/2013 in the case of Swaran Pal Singh and Others vs. Union of India and Others, Shri B. Mishra submits that the applicant is not entitled for any relief as prayed for in the O.A and the O.A deserves to be dismissed.

7. Shri B.A. Vaishnav, learned counsel for the applicant is not a position to dispute the fact that the issue involved in this O.A has been considered by the Honble High Court of Delhi in the two cases relied upon by Shri B. Mishra.

8. Perused the pleadings and the documents annexed thereto. Shri B.A. Vaishnav, learned counsel for the applicant argues that on extension of the benefit of 2nd financial upgradation under the MACP Scheme vide order dated 10.06.2013 (Annexure A-4), the respondents have fixed the Grade Pay of the applicant at Rs. 4800/- instead of Rs. 5400/-. Shri B.A. Vaishnav points out that the next promotional post of Assistant Executive Engineer carries the Grade Pay of Rs. 5400/- in Pay Band Rs. 15600-39100 (PB-3) as such on granting the 2nd financial upgradation under the MACP Scheme, the Grade Pay shall be fixed at Rs. 5400/- and not at Rs. 4800/-. The respondents in their order dated 19.08.2014 rejected his claim by referring to the provisions of the MACP Scheme contained in Office Memorandum No. 35034/3/2008-Estt.(D) dated 19.05.2009. Shri B.A. Vaishnav by placing reliance upon the order of Chandigarh Bench of the Tribunal dated 31.05.2011 in O.A. No. 1038/CH/2010 (Raj Pal vs. Union of India & Others) and the orders of the Principal Bench of the Tribunal dated 26.11.2012 in O.A. No. 904/2012 (Sanjay Kumar and Others vs. The Secretary Ministry of Defence, New Delhi and Others), dated 08.09.2015 in O.A. No. 1586/2014 (Vinai Kumar Srivastav and Another v. East Delhi Municipal Corporation, Delhi and Others) and dated 11.09.2015 in O.A. No. 101/2015 (Vikas Bhutani and Others v. Union of India and Others) argues that the stand of the respondents for rejecting the claim of the applicant has been negated in the said orders and as such the applicant is entitled for the reliefs as sought for in this O.A.

9. The grievance made by the applicant in this O.A is that he is entitled to the trade Pay of Rs. 5400/- and highlighted the basis of his claim that his next promotional hierarchy of post is the Assistant Executive Engineer in the Pay Band of Rs. 15600- 39100 with Grade Pay of Rs. 5400/-.

10. Shri B. Mishra , learned counsel for the respondents submits that the respondents have correctly granted the MACP benefit by upgrading the Grade Pay of Rs. 4600/- to Rs. 4800/-.

11. In view of the rival submissions of the learned counsel for the parties, the question that arises for our consideration is as under :

"Whether the hierarchy contemplated by the MACP Scheme is in the immediately next higher Grade Pay or is it in the Grade Pay of the next above Pay Band".

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12. Shri B. Mishra Learned counsel for the respondents points out that an identical question has been articulated by the Honble High Court of Delhi in W.P.(C) No. 3420/2010, R.S. Sengor & Others v. Union of India and Others, decided on 04.04.2011. We have carefully gone through the said judgement. We notice that the Honble High Court of Delhi in R.S. Sengor & Others v. Union of India and Others articulated identical issue and the same is at para 10 of the judgement. It reads as:

"10. The question would be whether the hierarchy contemplated by the MACPS is in the immediately next higher Grade Pay or is it the Grade Pay of the next above Pay Band."

The above question is answered by the Honble High Court of Delhi at para 11 of the said judgement, which reads as under :

"11. Whatever may be the dispute which may be raised with reference to the language of paragraph 2 of the MACPS the illustration as per para 4 of Annexure I to the OM, contents whereof have been extracted hereinabove, make it clear that it is the next higher Grade Pay which has to be given and not the Grade Pay in the next hierarchical post and thus we agree with the respondents that Inspectors have to be given the Grade Pay after 10 years in sum of Rs. 4,800/- and not Rs. 5,400/- which is the Grade Pay of the next Pay Band and relatable to the next hierarchical post. To put it pithily, the MACPS Scheme requires the hierarchy of the Grade Pays to be adhered to and not the Grade Pay in the hierarchy of posts."

13. Shri B. Mishra further drew our attention to para 11 of a recent judgement dated 17.03.2015 in W.P.(C) No. 5082/2013, Swaranpal Singh and Others v. Union of India and Others on the file of the Honble Delhi High Court by which the view in R.S. Sengor (supra) was reiterated. It reads as under :

"11. Questions that would essentially arise for determination in this case are O whether the benefit under MACPS can be claimed to the pay band applicable to the next promotional post in the hierarchy on the ground of seniors getting lesser pay than their juniors who have availed such scale of the promotional post under the ACP Scheme; whether Section-II Part- A of the 1st Schedule to the Railway Services (Revised Pay) Rules, 2008 prescribe minimum pay and the petitioners by application thereof become entitled to stepping up of their pay in case their pay scales/Pay Band fixed in terms of Rule 7 is less than the minimum pay so prescribed."

On a careful reading of the judgement of the Honble High Court of Delhi Swaranpal Singh and Others v. Union of India and Others, we find that the Honble High Court answered the above question at para 19 of the said judgement, which reads as :

"19. The grievance of the petitioners as made, is however, contrary to the fundamental concept on which MACPS introduced through the 6th Central Pay Commission operates. A bare reading of paragraph 2 of the MACPS would make it clear that it is the next higher Grade Pay which has to be given and not the Grade Pay in the next hierarchical

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post, as was available under the ACP Scheme with reference to the pay scale of the next above hierarchical post. It is not in dispute that MACPS supersedes ACP Scheme which was in force till August 31, 2008. Therefore, after August 31, 2008 any financial upgradation would be confined to placement in the immediate next higher grade pay in the hierarchy of the recommended revised Pay Band. The use of word 'merely' in para 2 of the Scheme supports this interpretation. Paragraph 2 further clarifies that the higher Grade Pay attached to the next promotional post in the hierarchy of the concerned cadre/organization will be given only at the time of regular promotion. Therefore, the claim that the petitioners should also be placed in the replacement Pay Band applicable to the next promotional post in the hierarchy as was available under the ACP Scheme is misplaced."

14. At para 20 of the said judgement, their Lordships were pleased to note that the very same issue had come up for consideration before this Court in W.P.(C) No. 3420/2010 in the case of R.S. Sengor & Others v. Union of India and Others, decided on 04.04.2011. Their Lordships quoted :

"20. This very issue had come up for consideration before this Court in W.P. (C) No.3420/2010 R.S.Sengor & Ors. Vs. Union of India & Ors. decided on April 04, 2011. In said case the petitioners were in Pay Band- 1 and had a corresponding grade pay of Rs. 1900/-. The next hierarchical post was also in Pay 1? and had a grade pay of Rs. 2400/-. The petitioners therein claimed that since the next hierarchical post had a pay band of Rs. 2400/-, they should, on financial upgradation, under the MACPS, be granted the grade pay of Rs. 2400/-. However, what the respondents in that case had done was to grant the petitioner therein the grade pay of Rs. 2000/- which was the next higher grade pay though, not the grade pay corresponding to the next hierarchical post. Dismissing the writ petition the Division Bench held as under:-

"10. The question would be whether the hierarchy contemplated by the MACPS is in the immediately next higher Grade Pay or is it the Grade Pay of the next above Pay Band.

11. Whatever may be the dispute which may be raised with reference to the language of paragraph 2 of the MACPS the illustration as per para 4 of Annexure I to the OM, contents whereof have been extracted hereinabove, make it clear that it is the next higher Grade Pay which has to be given and not the Grade Pay in the next hierarchical post and thus we agree with the Respondents that Inspectors have to be given the Grade Pay after 10 years in sum of Rs. 4800/- and not Rs. 5400/- which is the Grade Pay of the next Pay Band and relatable to the next hierarchical post. To put it pithily, the MACPS Scheme requires the hierarchy of the Grade Pays to be adhered to and not the Grade Pay in the hierarchy of posts."

15. By referring to the fact that the view in R.S. Sengor was followed by another Division Bench of this Court in the decision reported as 193 (2012) DLT 577, Union of India Vs. Delhi Nurses Union (Regd.) and Anr., at Para 22 of the said judgement, it was held as under :

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"22. Therefore, merely because others who have been granted financial upgradation in the pay scale of the promotional post in the hierarchy under the ACP Scheme and by operation of para 6 of MACPS, their pay is fixed with reference to the pay scale granted to them under the ACP Scheme, the petitioners would not get any right to be placed in such scales, since the language of the scheme makes it clear that the financial upgradation under ACP/MACPS are different than regular promotions in the grade."

The claim of the petitioners before the Honble High Court of Delhi in R.S. Sengor and Others (supra) and Swaran Pal Singh and Others (supra) is identical to that of the claim of the applicant in this O.A., as such, in view of the findings of the Honble High Court of Delhi on the issue at hand, one has to agree with the argument of Shri B. Mishra, learned counsel for the respondents.

16. Before agreeing with the argument of Shri B. Mishra, learned Counsel for the respondents, it is necessary for us to deal with the argument of Shri B.A. Vaishnav, learned Counsel for the applicant. As already observed, in support of the claim of the applicant, he places reliance upon the following orders :

- (i) Order, dated 31.5.2011 in OA NO. 1038/CH of 2010 in the case of Raj Pal v. Union of India and others on the file of Chandigarh Bench of the Tribunal;
- (ii) Order, dated 26.11.2012 in OA NO. 904 of 2012 in the case of Sanjay Kumar v. Union of India and others on the file of Principal Bench of CAT, New Delhi.
- (iii) Order, dated 11.9.2015 in OA No. 101 of 2015 in the case of Vikas Bhutani and others v. Union of India and others on the file of Principal Bench of CAT, New Delhi.
- (iv) Order, dated 8.9.2015 in OA No. 1586 of 2014 in the case of Vinai Kumar Srivastav v. East Delhi Municipal Corporation and others on the file of Principal Bench of CAT, New Delhi.

Shri B.A. Vaishnav also points out that the order of the Chandigarh Bench of this Tribunal in OA No. 1038/CH of 2010 was subject matter before the Hon'ble Punjab and Haryana High Court in C.W.P. No. 19387 of 2011 and the Hon'ble High Court of Punjab and Haryana confirmed the order passed in Raj Pal's case. He further points out that the S.L.P. [(CC) 7487 of 2012] preferred against the order of Hon'ble High Court of Punjab and Haryana was dismissed by the Hon'ble Supreme Court by judgment, dated 15.4.2013 and the matter has attained finality. He argues that in view of the fact that the judgment of the Hon'ble High Court of Punjab and Haryana was subject matter before the Hon'ble Supreme Court in the said SLP, which came to be decided by the Hon'ble Supreme Court by judgment, dated 15.4.2013, the submission of Shri B. Mishra cannot be entertained. The thrust of Shri B.A. Vaishnav is that, the judgment of the Hon'ble High Court of Punjab and Haryana is to be preferred to that of the Hon'ble High Court of Delhi in view of dismissal of SLP. At this juncture, Shri B. Mishra brings to our notice that the order of Hon'ble Supreme Court in SLP[(CC) 7467 of 2013] is not on merits but on the ground of delay and laches. In this regard, we may also mention that an identical matter to that of Raj Pal

(supra) was the subject matter before the Ernakulam Bench of the Tribunal in OA No. 816 of 2012 and the Hon'ble Tribunal allowed the same vide order, dated 29.1.2013 by following the order of the Chandigarh Bench, dated 31.5.2011. In OA No. 1038/CH of 2010, affirmed by the Punjab and Haryana High Court in its judgment, dated 19.0.2011 in C.W.P. No. 19387 of 2011. The said order of the Ernakulam Bench in OA No. 818 of 2012 was challenged before the Hon'ble High Court of Kerala in OP (CAT) No. 2000 of 2013 which came to be confirmed vide its judgment, dated 24.6.2013. The judgment of the Hon'ble High Court of Kerala in O.P. No. 2000 of 2013 was challenged by the Union of India before the Hon'ble Supreme Court in SLP (C) No. 21813 of 2014 [CC No.10791 of 2014] and the Hon'ble Supreme Court by the order, dated 8.8.2014 was pleased to stay the judgment of Hon'ble High Court of Kerala and the matter is still pending consideration of the Hon'ble Supreme Court. By referring to this fact, Shri B.Mishra argues that it cannot be said that the Hon'ble Supreme Court laid down any law while dismissing the said SLP (CC) No. 7467 of 2013 by the judgment, dated 15.4.201. In other words, the order of the Hon'ble Supreme Court in SLP[(CC) 7467 of 2013] is not on the merits of the matter but is only on the ground of delay and laches. Hence what can be argued is that, the judgment of the Hon'ble Supreme Court in Raj Pal's case binds only to the parties to the same. It cannot be regarded/treated as a precedent. We are in agreement with the argument of Shri B.Mishra particularly in view of the fact that the Hon'ble Supreme Court was pleased to stay the judgment of the Kerala High Court in O.P. No. 2000 of 2013 and the matter is still pending.

17. Now the next question before us is that, in view of the conflicting view of the Hon'ble High Court of Delhi and the Hon'ble High Court of Punjab and Haryana, we are in dilemma as to which of the judgements are to be preferred to that of another. Neither of the learned counsel is placing reliance upon any of the judgement of Honble Gujarat High Court in support of their respective claims. To answer this problem, we may usefully refer to the Full Bench judgement of this Tribunal in O.A. No. 555/2001, Dr. A.K. Dawar v. Union of India and Others, on the file of the Principal Bench of this Tribunal. In Dr. A.K. Dawar, the Principal Bench was considering the situation arising out of conflicting decisions of Honble High Court. It referred to the decisions in M/s East India Commercial C.o. Ltd., Calcutta and Another v. Collector of Customs, Calcutta, AIR 1962 SC 1893, Bhagaban Sarangi (supra) IPCL and Another v. Shramik Sena (2001) 7 SCC 469 and Director General (I&R) v. Holy Angels Schools, 1998 CTJ 129 (MRTPC). It held :

"17. Consequently, we hold :-

1. that if there is a judgement of the High Court on the point having territorial jurisdiction over this Tribunal, it would be binding :
2. that if there is no decision of the High Court having territorial jurisdiction on the point involved but there is a decision of the High Court anywhere in India, this Tribunal would be bound by the decision of that High Court;
3. that if there are conflicting decisions of the High Courts including the, High Court having the territorial jurisdiction, the decision of the Larger Bench would be binding; and
4. that if there are conflicting decisions of the High Courts including the one having territorial jurisdiction then following the ratio of the judgement in the case of Indian Petrochemicals Corporation Limited

20/11

(supra), this Tribunal would be free to take its own view to accept the ruling of either of the High Courts rather than expressing third point of view."

Thus, in view of the decision of the Full Bench in Dr. A.K. Dawar (supra), by following the judgement in Indian Petrochemicals Corporation Limited (supra) we are free to take our own view to accept the rulings of either the Honble High Court of Delhi and Honble High Court of Punjab and Haryana. At this juncture, we may also observe that among the rulings relied upon by the parties, the judgement of Honble High Court of Delhi in W.P.(C) No. 3420/2010 in the case of R.S. Sengor & Others vs. Union of India and Others is the oldest one, i.e. dated 04.04.2011. The order of the Chandigarh Bench of the Tribunal in the case of Raj Pal vs. Union of India and Others in O.A. No. 1038/CH/2010 was decided later. In other words, as on the date of decision of the Chandigarh Bench of the Tribunal in Raj Pal, the judgement of Honble High Court of Delhi was very much available and if it refers to the issue involved in this O.A, then the judgement in Raj Pal is per incuriam. Honble High Court of Punjab and Haryana did not refer to the judgement of Honble High Court of Delhi in the case of R.S. Sengor while dealing with the CWP No. 19387/2011 (supra). In view of this position and also in view of the guidelines of the Full Bench of the Tribunal (Principal Bench) in Dr. A.K. Dawar (supra), we accept the ruling of the Honble High court of Delhi in R.S. Sengor (supra) which was consistently followed by it in Swaran Pal Singh (supra) and also in Union of India vs. Delhi Nurses Union (Regd.) and Another reported at 193 (2012) DLT 577. We may also observe that the Honble Supreme Court in the case of Government of Tamil Nadu vs. S. Arumugham & Ors. held that the Courts cannot substitute their own views for the views of the Government or direct a new policy based on the Courts view. Further, Honble Supreme Court in the case of Secretary, Govt. (NCT of Delhi) & Others v. Grade-I DASS Officers Association & Others, 2014 (13) SCC 296, while considering 'ACP Scheme held that the scheme being a policy decision of the Government, the Court will not interfere with the same.

18. We have also carefully perused the Office Memorandum dated 19.05.2009 by which the Government has introduced the MACP Scheme. Paras 2, 8 and 8.1 of the MACP Scheme are relevant and they are noted as under :

"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 I, 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/organization will be given only at the time of regular promotion.

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8. Promotions earned in the post carrying same grade pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of MACPS.

8.1 Consequent upon the implementation of Sixth CPC's recommendations, grade pay of Rs. 5,400/- is now in two pay bands viz., PB-2 and PB-3. The grade pay of Rs. 5,400/- in PB-2 and Rs. 5,400/- in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under MACP Scheme."

19. Annexure I to the DOPT OM dated 19.5.2009, vide illustration 4 clarifies as under:-

"In case a Govt. servant joins as a direct recruits in the Grade Pay of Rs.1,900/- in Pay Band-I Rs. 5,200- 20,200/- and he gets no promotion till completion of 10 years of service, he will be granted financial upgradation under MACP scheme in the next higher Grade Pay of Rs. 2,000/- and his pay will be fixed by granting him one increment + difference of grade pay (i.e. Rs.100/-). After availing financial upgradation under MACP scheme, if the Govt. servant gets his regular promotion in the hierarchy of his cadre, which is to the Grade of Rs. 2,400/-, on regular promotion, he will only be granted the difference of Grade Pay of between Rs. 2,000/- and Rs. 2,400/-. No additional increment will be granted at this stage."

A combined reading of the above stipulations in the MACP Scheme would lead to a irresistible conclusion that it is the next higher Grade Pay which has to be given and not the Grade Pay in the hierarchical post and thus we agree with the respondents that the applicant has to be given the Grade Pay in a sum of Rs. 4800/- and not Rs. 5400/- which is the Grade Pay of the next Pay Band and relatable to the next hierarchical post.

20. In view of the foregoing, we do not find fault with the action on the part of the respondents in granting the Grade Pay of Rs. 4800/- while extending the benefit of 2nd financial upgradation under the MACP Scheme and consequently, the question of any direction as sought by the applicant does not arise. The O.A deserves to be dismissed. Accordingly, the same is dismissed with no order as to costs."

The applicants in their pleadings in para 4(1) submitted that "all the seniors i.e. the Assistant Conservator of Forests who have completed 24 years of service before 31.08.2008 were granted the pay scale of Rs.10,000-15,200(revised pay scale of Rs.15600-39100, with G.P Rs.6600), were subsequently provided third MACP benefit of Grade Pay of Rs.7600/-, whereas the applicants were not given the 2nd financial upgradation i.e. Grade Pay of Rs.6600/- as given to other similarly placed persons. In the above para the applicants have alleged that there is disparity in consideration of their case, as their seniors who have enjoyed the ACP Scheme earlier, are benefitted more than them(applicants) as the seniors got ACP benefits after 24 years of service which the applicants could not avail of since they joined the service later. It is pertinent to point out that the MACP Scheme itself which was issued by the Government of India,

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Department of Personnel & Training vide O.M. No.35034/3/2008-Estt.(D) dated 19.05.2009 have clarified in para 11 that :-

"It is clarified that no past case would be reopened. Further by implementing the MACP Scheme the difference in pay scale on account of grant of financial upgradation under the old ACP Scheme (of August, 1999) under the MACP Scheme within the same cadre shall not be construed as an anomaly."

(j) It has been further clarified by DOP&T vide O.M. No.11/1/2010-JCA issued on 6 th October, 2010 that :-

"Further differences in pay scales on account of grant of financial upgradation under ACPs (of August, 1999) and the MACPS within the same cadre shall not be construed as an anomaly."

7. While we peruse all the above facts and the decisions of the Hon'ble C.A.T., Ahmedabad Bench in O.A.No.120/000018/2015 and Hon'ble High Court of Delhi in WP(C) No.3420/2010, we are firmly of the view that the MACP benefit would be given in the hierarchy of next higher Grade Pay and not in Grade Pay of promotional hierarchy which will be payable on actual promotion. Hence, the O.A. lacks merit and is dismissed. No cost."

9. Considering the relevant orders of Hon'ble Delhi High Court and CAT, Ahmedabad Bench, we find this OA lacks merit. Hence the OA is dismissed. No order is passed as to costs.

10. Ld. Counsel for the applicant at the Bar submitted that this very issue is pending before the Hon'ble Apex Court. Obviously the respondents will take any further action, if required, on such decision of the Hon'ble Apex Court.

(JAYA DAS GUPTA)
MEMBER (A)

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(JASMINE AHMED)
MEMBER (J)

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