

CENTRALADMINISTRATIVE TRIBUNAL,MUMBAI BENCH, CIRCUIT SITTING AT NAGPUR.ORIGINAL APPLICATION No. 2188 OF 2014

**Dated:- 12<sup>th</sup> day of January, 2018.**

**Coram: Hon'ble Shri Arvind J. Rohee, Member (J)  
Hon'ble Shri R. Vijaykumar, Member (A)**

**Hariom Prasad Gupta S/o. Babulal Gupta**

Age 47 Years

Occupation: Senior Hindi Translator

O/o. The Commissioner

Central Excise & Customs Nagpur

Resident of Type III, Q. No. 18,

Central Excise Colony,

Near Balaji Mandir,

Seminary Hills, Nagpur 440006. ....**Applicant.**

**(By Advocate Shri. R.K. Shrivastava)**

Versus**(1) The Union of India**

Through The Secretary

Ministry of Finance

Department of Revenue

North Block, New Delhi 110001.

**(2) The Chief Commissioner**

Central excise, Customs & Service Tax

Telangkhedi Road,

Nagpur 440006.

**(3) The Commissioner**

Central excise, Customs & Service Tax

Telangkhedi Road,

Nagpur 440006.

....**Respondents**

**(By Advocate Shri. R.G. Agrawal)**

**Reserved on :- 02.11.2017.**

**Pronounced on :- 12.01.2018.**

ORDERSHRI. R. VIJAYKUMAR, MEMBER (A)

1. This is an application filed on 07.07.2014 against the orders of respondents in Establishment No. 241/13 dated 11.12.2013 withdrawing the previous grant of first financial upgradation under MACP scheme with

Grade Pay of Rs. 4600/- to Shri. H.P. Gupta (Senior Hindi Translator Central Excise Department, Nagpur). The applicant has sought the following reliefs:-

**"(i)** To call for the records of issuance of impugned order and to quash and set aside the impugned order dated 11.12.2013 (Annexure A-1 of OA).

**(ii)** To call for the records which lead to grant of 1<sup>st</sup> MACP to the applicant and to grant him the benefit of 1<sup>st</sup> ACP in the promotional hierarchy in the Grade of Assistant Director (O.L.) in the grade pay of Rs. 5400 in PB-3 w.e.f. 01.01.2006.

**(iii)** To call for the records for the Order of grant of 2<sup>nd</sup> MACP and to direct the respondents to grant him the benefit of 2<sup>nd</sup> MACP in the grade pay of Rs. 6600 w.e.f. 08.06.2013 on completion of 20 years of service.

**(iv)** To grant him the consequential arrears of pay and other allowances.

**(v)** To grant him the interest @ 12% per annum on such arrears of pay and allowances.

**(vi)** Any other consequential benefits including the cost of this OA as the Hon'ble Tribunal may deem suitable and fit in the circumstances of the case."

**2.** The factual matrix of the case is that the applicant was appointed on 08.06.1993 as Junior Hindi Translator in the pay scale of Rs. 1400-2300/- later revised by the 5<sup>th</sup> Pay Commission to Rs. 5000-8000. He was promoted as Senior Hindi Translator on 08.04.2002 in the pay

scale of Rs. 5500-9000/- and continues to work in that post to date. The pay scales for Hindi Translators, such as the applicant, who were working in the subordinate offices was fixed, following the recommendations of the 5<sup>th</sup> Pay Commission w.e.f. 01.01.1996 as Rs. 5,000-8000 for Junior Hindi Translators, at Rs. 5500-9000 for Senior Hindi Translators and at Rs. 6500-10,500 for Additional Director (Official language). In contrast, the Hindi Translators of the Central Secretariat Official Language Services (CSOLS) were granted pay scales of Rs. 5500-9000 for Junior Hindi Translators (CSOLS), Rs. 6500-10,500 for Senior Hindi Translators (CSOLS) and Rs. 7500-12,000 for Assistant Director (CSOLS). This was based on the recommendations of the 5<sup>th</sup> Pay Commission and was enforced through an order issued by the Ministry of Finance F.No.70/5/2003-IC dated 29.03.2004 granting higher pay scales only to Hindi Translators of CSOLS and not to others. This disparity was based on the recommendations of the 5<sup>th</sup> Pay Commission but also existed for various posts and pay scales in the Secretariat, which jobs were considered to be more onerous and meriting higher pay scale than similarly named jobs with pay scales in the subordinate

offices.

3. In the specific case of Hindi Translators, a Full Bench of the Principal Bench of this Tribunal considered the matter in OA No. 1433/2005 decided on 20.02.2008 and overruled a previous Bench decision of Pradeep Raj Sharma and Ors. v/s. Union of India & Ors. in OA No. 1736/2005 decided on 26.07.2006, which had held that there was no difference in the nature of work assigned in the subordinate offices and the CSOLS. The Bench was of the considered view that there is not only difference in the mode of recruitment, but even the quality of work performed and the nature of work assigned in the subordinate offices vis-a-vis CSOLS vary and differ considerably. The Full Bench judgment held that there is no justification in the contention of applicants working in the subordinate offices, that there was a violation of Article 14 of the Constitution of India. The Government, later modified and harmonized the pay scales of translators in its order dated 24.11.2008 by giving effect from 01.01.2006 and in accordance with the recommendations of the 6<sup>th</sup> Pay commission but until this happened, the distinction found to exist by these orders of the Full Bench of this Tribunal ruled the legal

space and applied for pre-revised scales as on 01.01.2006.

**4.** The 6<sup>th</sup> Pay Commission re-structured various pay scales and merged three pre-revised scales of Rs. 5000-8000/-; Rs. 5500-9000/- and Rs. 6500-10,500/- and assigned them PB-2 with Rs. 4200/- Grade Pay while assigning to the pre-revised scale of Rs. 7500-12000, the pay of PB-2 with Grade Pay of Rs. 4800. By virtue of the orders of the 6<sup>th</sup> Pay Commission, however, a problem appears to have arisen that the three posts of Junior Hindi Translators, Senior Hindi Translators and Assistant Director in Subordinate offices and the two posts of Junior Hindi Translators (CSOLS) and Senior Hindi Translators (CSOLS) were all fitted into the pay scales of PB-2 of Rs. 9300-34,800/- with the same Grade Pay of Rs. 4200. This was evidently a major grievance which also obliterated all the promotions obtained previously by the Hindi Translators on two occasions by the Hindi Translators in the subordinate offices and on one occasion by the Hindi Translators in the CSOLS.

**5.** Following the grants by the 6<sup>th</sup> Pay Commission and the above anomalies/ grievances, the Ministry of Finance in OM F.No.1/1/2008-IC

dated 24.11.2008, resolved one of the recommendations of the 6<sup>th</sup> Pay Commission which was for parity in pay scale between the Hindi Translators working in the Central Secretariat Official Language Services (CSOLS) and the Hindi Translators in various subordinate offices of the Central Government. The designations were also revised as Junior Translator, Senior Translator etc. and the pay scales now granted by the Pay Commission corresponded to the normal replacement scales for pre-revised scales that were being enjoyed earlier by the Hindi Translators of the CSOLS with Junior Translators (CSOLS) granted PB-2 with Grade Pay of Rs. 4200/- and Senior Translators (CSOLS) granted PB-2 of Rs. 4600/-.

**6.** Thereafter, the Government introduced, in accordance with the Pay Commission recommendations, the MACP scheme which was given effect from 01.09.2008.

**7.** In Government of India OM No. F.No.1/1/2008-IC dated 13.11.2009, Ministry of Finance granted the revised pay structure of PB-2 and Grade Pay of Rs. 4600/- to posts that were in the pre-revised scale of Rs. 6500-10500 as on 01.01.2006 and which had been granted the normal replacement scale of PB-2 and Grade Pay of Rs.

4200/- but which were now, in these orders, directed to correspond to the pre-revised scale of Rs. 7450-11,500/- which had obtained the normal replacement scale of PB-2 with Grade Pay of Rs. 4600.

**8.** The effect of these orders are displayed in the following table:

Designation	Location	Pre-revised Scale	6 <sup>th</sup> PC PB-2+GP	By orders 24.11.2008		13.11.2009 order effect
				Designation	PB-2 + GP	
JHT	Sub.Of f	5000-8000	4200	JT	4200	NA
JHT	CSOLS	5500-9000	4200	JT	4200	NA
SHT	Sub.Of f	5500-9000	4200	ST	4600	NA (Dispute)
SHT	CSOLS	6500-10500	4200	ST	4600	4600
AD	Sub.Of f	6500-10500	4200	AD	PB-3 5400	4600
NA	NA	7450-11500	4600	NA	NA	4600
AD	CSOLS	7500-12000	4800	AD	PB-3 5400	NA

- JHT:- Junior Hindi Translators
- SHT:- Senior Hindi Translators
- AD:- Additional Director
- Sub. Off:- Sub-ordinate Office
- NA:- Not applicable
- CSOLS:- Central Secretariat Official Language Service.

**9.** To summarize the claim of the applicant who received his first promotion as Senior Hindi Translator on 08.04.2002 in the pay scale of Rs. 5500-9000/-, he draws upon the orders of 24.11.2008 and claims that he was equivalent to a Senior Hindi Translator of the CSOLS who was receiving of Rs. 6500-10500 in the pre-revised scales and since this claim is merged with the

scale of Rs. 7450-11500/- he is entitled to PB-2 with grade Pay of Rs. 4600/- as fitment in the 6<sup>th</sup> Pay Scale. Thereafter, he seeks first ACP to PB-3 with grade Pay of Rs. 5400/- and 2<sup>nd</sup> MACP of Rs. 6600/- with PB-3 from 08.06.2003 on completion of 20 years of service.

**10.** The respondent had contended this argument and has stated that the pre-revised scale of the applicant was corresponding to PB-2 with Grade Pay of Rs. 4200/- and in accordance with the MACP scheme, he was eligible for higher Grade Pay of Rs. 4600/- from 08.04.2002. With reference to the claim based on the order dated 13.11.2009, the respondents state that they have already given him the promotion in the Grade Pay of Rs. 4600/- w.e.f. 08.04.2002 and therefore, there was no question of further pay fixation from 01.01.2006 and thereafter, they gave him first financial upgradation under 2<sup>nd</sup> MACP on completion of 10 years on 08.04.2012. They urged that the applicant was promoted to the post of Senior Hindi Translators from the scale of Rs. 5000-8000 to Rs. 5500-9000/- and not from the pre-revised scale of Rs. 6500-10,500/- that was merged with Rs. 7450-11,500/- as mentioned in the OM dated 13.11.2009. They also referred to the wording of the OM that "In case a post

already exists in the Scale of Rs. 7450-11,500/-, the post being upgraded from the scale of Rs. 6500-10500/- should be merged with the post in the scale of Rs. 7450-11500/-". They also urged that the OM dated 24.11.2008 has not guaranteed that the officers who were already getting Rs. 4600/- as Grade Pay to get another promotion as on 01.01.2006 with Grade Pay of Rs. 4800/-. In the result, they present the applicant's pay fixation according to the MACP Scheme as under:-

08/06/93	Joined in Department as Jr. Hindi Translator.	Grade Pay of Rs. 4200/-
08/04/02	Promoted as Sr. Hindi Translator	Grade Pay of Rs. 4600/-
08/04/12	Grant of 2 <sup>nd</sup> Financial Upgradation in the grade of Rs. 4800/-	Grade Pay of Rs. 4800/-

**11.** In support of his case, the applicant has referred to a decision of the Ernakulam Bench of the Tribuanl in Smt. T.P. Leena V/s. Union of India which was upheld by the Hon'ble High Court and Hon'ble Supreme Court to allow the Junior Hindi Translator in an isolated post in the Fisheries Department with a Grade Pay of Rs. 4800/- on grant of first financial upgradation and MACP ignoring the first ACP grant to her in the past. This order has been

upheld by the Kerala High Court and the Hon'ble Supreme Court which recorded: "we do not see any reason to interfere with the impugned order. The Special Leave Petition is accordingly dismissed". They have also cited the orders of this Bench in OA No. 508/2013 dated 22.10.2013 for a similar employee of the same department located in Mumbai which directed the respondents to consider her case in a similar manner. They also refer to the decision of the CAT Chandigarh Bench in OA No. 1038/2010 of Rajpal v/s. Union of India, which was upheld by the Hon'ble High court and dismissed for delay by the Hon'ble Apex Court. They have also referred to the orders of the Hon'ble Principal Bench in OA No. 904/2012 dated 26.11.2012 of an employee in the Military Farms and OA No. 864/2013 dated 12.03.2014 in relating to an employee of the NCERT.

**12.** In response, the respondents have denied the comparison with the case of Smt. Leena of the Fisheries Department in the case decided by the CAT Ernakulam Bench, on the grounds that this was an isolated post whereas the applicant has promotional prospects. They have affirmed that they are strictly abiding by the orders issued by the Government on this

matter.

**13.** In their rejoinder, the applicant has questioned the logic of the respondents in treating the applicant as having been given the Grade Pay of Rs. 4600/- w.e.f. 08.04.2002 and of Rs. 4200/- at the time of joining service whereas the actual pay scales were only Rs. 5500-9000/- as at 08.04.2002. They contest the interpretation by the respondents of the office memo dated 13.11.2009. They also refer to an order issued by the Hon'ble Chief Justice of India on 05.02.2010 and gazetted on 15.01.2010 by which the pre-revised pay scale of Rs. 6500-10,500/- is awarded PB-2 with Grade Pay of Rs. 4600/-. They also refer to pay fixation done by the various offices of the respondents where the grade pay for the Junior Hindi Translator who was earlier getting Rs. 6500-10,500/- in the pre-revised scale was given Rs. 4600/- Grade Pay from 01.01.2006. They have further cited another order of the CAT Ernakulam Bench in the case of P.R. Anandvally and T.M. Thomas which was upheld by the Hon'ble High Court of Kerala and a recent order of the Principal Bench on 29.06.2016 in OA No. 747/2014 which was entirely based on the previous decision of the CAT Ernakulam Bench in OA No. 107/2011.

**14.** In their sur-rejoinder, the respondents have again urged that the Government had only clarified that the posts which carried a pay scale of Rs. 6500-10500/- before 01.01.2006 would be granted a Grade Pay of Rs. 4600/- and does not refer to the posts that have been upgraded to the pay scale of Rs. 6500-10,500/-. They also pointed out that the applicant had received one promotion from Junior to Senior Hindi translator and this has been maintained in the gradation established post 6<sup>th</sup> Pay Commission. Therefore, the applicant is only entitled to 2<sup>nd</sup> MACP on completion of 10 years in the date of last promotion.

**15.** We have gone through the O.A. along with Annexures A-1 to A-22, Rejoinder to respondents' reply alongwith Annexures A-23 to A-28 filed on behalf of the applicant. We have also gone through the reply alongwith Annexures R-1 to R-10 and the Sur-rejoinder filed on behalf of the respondents and have examined the files and correspondence related to the disciplinary proceedings and cognized all relevant facts of the case.

**16.** We have heard the learned counsel for the applicants and the learned counsel for the respondents and carefully considered the facts

and circumstances, law points and rival contentions in the case.

**17.** The essential building block of all these claims by Hindi Translators in different departments are based on the ratio and analysis made in the course of the judgment in OA No. 107/2011 of CAT Ernakulam Bench. Therefore, careful reading of this judgment in relation to its statement of facts and factual inferences have become warranted. The following observations are accordingly made. Para 2 of the judgment in case of T.P. Leena v/s. Union of India dated 27.09.2011 reads as follows:-

*"2. The following dates and pay particulars of the applicant are essential for the purpose of deciding the issue:-*

*(a) 30.09.1990: The applicant joined the service of the Respondents as Hindi Translator (Group C Non-Gazetted) on regular basis. At that time her pay scale was Rs. 1400-2300. This is an isolated post - a 'stand alone' post with no post of feeder or promotional grade.*

*(b) 01.01.1996: Introduction of revised pay rules, 1996 in the wake of acceptance of the Fifth Pay Commission Recommendations and the replacement scale to the above scale of Rs. 1400-2300 was Rs. 4500-7000/-*

(c) 08.11.2000:- The above said Revised pay scale of Rs. 4500-7000 for Hindi Translator was replaced with retrospective effect from 01.01.1996 at Rs. 5000-8000/-.

(d) 13.07.2004: The post of Hindi Translator was re-designated as Junior Hindi Translator (without any change in pay scale or functional responsibilities)

(e) 09.08.1999:- Introduction of Assured Career Progression whereby financial upgradations are made available to those who could not get their promotion within a specific period (12 and 24 years) though these were eligible for promotion. The financial upgradation for isolated post is in accordance with the grade of pay i.e. S-1, S-2 etc., as given in an annexure to the order dated 09.08.1999.

(f) 29.03.2002: The applicant completed 12 years of service in the post of Junior Hindi Translator (erstwhile Hindi Translator) without any promotion and as such was entitled to be considered for grant of the first financial upgradation under the then existing ACP Scheme. Accordingly, she was placed in the pay scale of rs. 5,500-9000/- w.e.f. 30.03.2002.

(g) 01.01.2006: Revised Pay Rules 2008 came into existence with retrospective effect from 01.01.2006.

(h) 01.01.2006: By a Memorandum dated 24.11.2008, Pay of Rs. 5500-9000 replaced by Rs. 7450-11500/- with retrospective

effect from 01.01.2006.

(i) 01.01.2006: Pay scale for Rs. 7450-11500 under the Revised Pay Rules (2008) replaced by the Pay Band of Rs. 9,300-34800 with Grade Pay 4600/-.

(j) 01.01.2006: By an order dated 04.05.2009, the pay of the applicant was fixed in the pay band of Rs. 9300-34800 by virtue of her having been drawing the pay in the erstwhile scale of Rs. 7450-11500 as first financial upgradation.

(k) Missing.

(l) 01.01.2006: As per the revised Pay Rules, 2008, the erstwhile pay scales of Rs. 5000-8000, 5500-9000, 6500-10500 have been merged and replaced by the revised Pay Band P-2 of rs. 9300-34800/- with Grade Pay of Rs. 4200/-.

(m) 19.05.2009: The erstwhile ACP scheme introduced on 09.08.1999 has been replaced by Modified Assured Career Progression (MACP) effective from 01.09.2008. This contains a provision that promotions earned/upgradations 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 the Modified ACPS.

(n) 13.11.2009: By office Memorandum, the Pay scale of Rs. 6500-10500 with Grade Pay of Rs. 4200/- had been revised

to Rs. 7450-11500 w.e.f. 01.01.2006 and the grade pay enhanced to Rs. 4600/-.

(n) 30.03.2010: The applicant completes 20 years of service and is thus entitled to be considered for 2<sup>nd</sup> Financial Upgradation under the MACP."

**18.** The respondents in that case had apparently granted Rs. 4600/- to Smt. Leena whose first financial upgradation in 2002 under ACP was to a scale which has been merged with her substantive scale on 01.01.2006. Thereafter, they awarded her Rs. 4800/- Grade Pay on completion of 20 years of service in 2010. The internal audit wing of the department appears to have differed from the department by interpreting the 6<sup>th</sup> Pay Commission recommendation pay scale of Junior Hindi Translator at Grade Pay of Rs. 4600/- and then first and 2<sup>nd</sup> MACP accordingly on 01.09.2008 at Grade Pay of Rs. 4800/- and 30.03.2010 with Grade Pay of Rs. 5400. The Bench also referred to a decision of the CAT Hyderabad Bench which held: "We entirely agree with the view that Junior and Senior Hindi Translators working in sub-ordinate offices are entitled for the pay scales on par with Junior and Senior Hindi Translators working in CSOLS". After recording the view of the parties the order records

certain facts that in its opinion are accepted by parties. An extract of Para 11 of these 'accepted' facts as deduced in these orders are copied below:-

*"This pay scale of Rs. 5500-9000/- was replaced by Rs. 7450-11500/- vide Annexure A-3 dated 24.11.2008 (as modified by Annexure A-4 dated 27.11.2008)."*

**19.** It is evident that once the Tribunal has decided that all these "Facts" were accepted/agreed by the parties and noting at Para 4 that "the action of the respondents reeks with malafide," it came to the conclusion that it did and which has been cited by various Courts/ Tribunals across the country.

**20.** We may now refer to the Table at the foregoing paragraph 8 that places these facts in chronological order and in a manner that can enable comprehension. The first fact that strikes notice is the fixation, of five posts - Three in the subordinate offices and two in the CSOLS, in the same Pay Band of PB-2 with Grade Pay of Rs. 4200. This has apparently equated the JHT, SHT and AD of the subordinate offices and also with JHT and SHT of the CSOLS. The pre-revised scale of Rs. 7450-11500 has no part to play in this anomalous situation. The Assistant

Director (CSOLS), however, got fixed into the pay band PB-3 with Grade Pay of Rs. 5400. the orders in OM dated 24.11.2008 resolved this problem in two ways, the first, by adopting the 6<sup>th</sup> Pay Commission recommendation on parity of subordinate offices and CSOLS on pay scales which had been considered by the Full Bench of this Tribunal in the Principal Bench and rejected. Therefore, the difference between these two categories persisted from 01.01.1996 to 01.01.2006 when it was reconsidered and recommendations accepted. This Full Bench decision had rejected a previous decision of this Tribunal and had become final. The orders of this Tribunal in its Hyderabad Bench which had not noted this decision of the Full Bench, were, therefore, per incuriam and could not have been considered in the Ernakulam Bench orders. The second aspect of the orders of 24.11.2008 was that it resolved the pay and designation anomaly by simply renaming them, preserving their seniority and grade pay. Notably, the odd fixation for the Assistant Director of the subordinate offices whose pre-revised scale was Rs. 6500-10,500 was not 'replaced' by the scale of Rs. 7450-11,500 or awarded PB-2 with Grade Pay of Rs. 4600 as we

might deduce, if we follow the logic in the analysis of the Ernakulam orders, but was awarded PB-3 with Grade Pay of Rs. 5400. The orders in OM dated 13.11.2009 then become amply clear as irrelevant and in fact, damaging, because, with reference to the same Table at Para 8 above, there would be no change for the erstwhile JHT in subordinate offices and CSOLS. However, for Senior Hindi Translator in subordinate offices, they would have received Grade Pay of Rs. 4200 since their pre-revised scale was Rs. 5500-9000. Further, for Senior Hindi Translator (CSOLS), there would be change but the Assistant Director (CSOLS) would have been awarded only PB-2 with Grade Pay of Rs. 4600/- as against the previous orders of 24.11.2008 that gave the Assistant Director, PB-3 with Grade Pay of Rs. 5400. This order has, therefore, no application in the matter of Hindi Translators and needs to be discarded as a tedious distraction. Notably, for this analysis, we had no need to make use of nebulous terms such as replacement pay scales which enabled a back and forth movement in the logic of the Ernakulam Bench orders.

**21.** Referring to the last column of the Table at Para 8 above, we may keep the issue of

parity of the Assistant Director aside for a moment and consider the rest. By the logic of the Ernakulam orders, by virtue of the order of 13.11.2009, the posts which were in the pre-revised scale of Rs. 6500-10,500 were granted the pay band and grade pay that replaced the pre-revised scale of Rs. 7450-11,500. The orders of 24.11.2008 were read into this to mean that the promoted post of Senior Hindi Translator in subordinate offices were equal to or on par with the Senior Hindi Translator (CSOLS). The logic proceeds to then go back before 01.01.2006 and finds that the pre-revised scale of the Junior Hindi Translator (CSOLS) and Senior Hindi Translator (Subordinate Offices), two entirely different categories with different work and mode of recruitment as per the orders of the Full Bench of the Principal Bench CAT, were the same. Therefore, the orders hold that the replacement scale for Rs. 7450-11,500 were also hold for the Junior Hindi Translator (CSOLS). The logic then reaches its conclusion by equating the Junior Hindi Translator (Subordinate Offices) and Junior Hindi Translator (CSOLS) by virtue of the 24.11.2008 order and the 'per incuriam' views of CAT, Hyderabad and holds that this post should also

get the new pay for the pre-revised scale of Rs. 7450-11,500. While not wishing to extend this analysis further, we discern that the Ernakulam Bench engaged in the fallacy of division in its orders by going back and forth between categories and orders and without considering the logic of each order and its chronological character in application to the cases.

**22.** As a result of the application if the various orders as above, the promotion received from Junior Hindi Translator to Senior Hindi Translator, re-designated as Senior Hindi Translator, is preserved and only ACP II or MACP II and III will be available to such persons as per eligibility as in the case of the present applicant who becomes eligible by this logic for MACP II by 2012.

**23.** Respondents have also referred to the stay granted by the Hon'ble Apex Court in the M V Mohanan Nair Vs. UOI & Ors case. However, a perusal of that case shows that apart from an overlap in the analysis on the aspect of replacement scales, the context is entirely different and the relief sought is on the issue of grant of MACP in the hierarchy of posts as opposed to the hierarchy of grade pay. The case of Raj Pal (Supra) is also of the same nature

and is not a relevant precedent.

**24.** In the circumstances, as elaborated above and the facts of the matter, it is not possible to rely on the orders of the CAT, Ernakulam in OA No. 107/2011. However, that judgment has been upheld by the Hon'ble High Court of Kerala and by the Hon'ble Apex Court. Given the above discussion, it is only possible to hold that that decision was taken *in personam* and not *in rem*. Accordingly, all decisions that have been based on this judgment cannot be relied upon for the present purpose. This includes the Annexures and the annexed orders of various offices of the respondents across the country which, in some cases clearly cite the decision of CAT (Ernakulam) while granting such benefits. The orders of this Tribunal in its Nagpur Bench in OA Nos. 2120, 2138 & 2139/2005 decided on 02.08.2012 did not also notice the previous decision of the Full Bench of the of the Principal Bench of this Tribunal Supra (Para 3) decided on 20.02.2008 and is clearly, *per incuriam*.

**25.** In the circumstances set out above, it is apparent that this applicant who was appointed on 08.06.1993 as Junior Hindi Translator and was promoted on 08.04.2002 as

senior Hindi Translator was eligible to be fixed in the Pay Band of PB-2 with Grade Pay of Rs. 4600/- w.e.f. 01.01.2006 and would, therefore, become eligible for the 2<sup>nd</sup> MACP on 08.04.2012 for Grade Pay Rs. 4800/- in PB-2, in the hierarchy of Grade Pays unless he has received another promotion by that date. The orders of the respondents in regard to the applicant and his pay fixation are, therefore, quite in order although in accordance with the logic set out in this order, and this application is accordingly dismissed with no order as to costs.

**(R. VIJAYKUMAR)**

**MEMBER (A)**

**(A. J. ROHEE)**

**MEMBER (J)**

***srp***