CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00178/2018

DATED THIS THE 13TH DAY OF FEBRUARY, 2019

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

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

K.V. Gopalakrishnan,
S/o A.V. Achuthan Nair,
Aged about 60 years,
Asst. Director (Retired),
Textiles Committee, Govt. of India,
Ministry of Textiles,
And residing at
No. 57, Mathru Layout, Yelahanka New Town,
Bangalore 560 065 .....Applicant

(By Advocate Shri M.R. Achar)

Vs.

1. The Union of India,
Represented by Secretary,
Ministry of Textiles,
Udyog Bhavan, New Delhi 110 001

2. The Vice Chairman,
Textiles committee,

Govt. of India, Ministry of Textiles,
P. Balu Road, Prabhadevi,
Mumbai 400 025

3. The Secretary,
Textiles Committee,
Govt. of India, Ministry of Textiles,
P. Balu Road, Prabhadevi,
Mumbai 400 025 ….Respondents

(By Shri M.V. Rao, Counsel for the Respondents)

O R D E R (ORAL)

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

Heard. The matter relates to grant of MACP whether to be in the promotional hierarchy as is available in the ACP or in the financial upgradation level as is available in MACP is the question. This was apparently granted to him and following an audit objection it was withdrawn. The matter seems to be covered by the judgment of the Hon'ble Calcutta Bench in O.A. No. 195/2014 dated 28.04.2016 which we quote:

"ORDER

Per Ms. Jaya Das Gupta, A.M.

The applicants have filed this case under Section 19 of Administrative Tribunals Act, 1985 seeking the following reliefs:-

"a) Leave be granted to move the original application jointly under Rule 4(5)(a) of the Central Administrative Tribunal(Procedure) Rules, 1987;

b) An order be passed directing the authorities to review the order 22.10.2010, 04.01.2011, 15.12.2010 and 23.01.2014 whereby the respondent authorities extended the benefits of MACP Scheme to the applicants to the next higher grade by fixing the sale of pay of the applicants in the promotional scale i.e. PB-3 with grade of RS.6600.

c) An order be passed directing the authorities to grant all

consequential and monetary benefits to the applicants after fixing the pay scale of the applicants to the next promotional scale i.e. PB-3 with grade pay of Rs.6600/- with effect from the date when the authorities extended benefits of MACP Scheme to the applicants;

d) An order be passed directing the respondent authorities to grant all consequential and monetary benefits to the applicants;

e) An order directing the respondent authorities to act in accordance with law;

f) An order to issue, directing the respondents to produce the records of the case before this Hon'ble Tribunal so that conscious able justice may be done;

g) Such other or further order direction or directions, as your LORDSHIPS deem fit and proper in the interest of justice .."

2. It is the case of the applicants that they were posted as Forest Rangers in Andaman & Nicobar Islands Forest Department on various dates in the pay scale of Rs.1400-2300. The respondent authorities enacted a Recruitment Rule on 25.07.1991 in the promotional hierarchy of Forest Rangers which was Assistant Conservator of Forests in the pay scale of Rs.2000-3500 and Assistant Conservator of Forests(Selection Grade) carrying the pay scale of 3000-4500. From 27.12.2000 i.e. in the period of Vth Central Pay Commission, the applicants were given the benefit of the first ACP to the scale of Rs.6500-10500 which was the scale of the next promotional hierarchy of Assistant Conservator of Forests on various dates depending on the initial date of joining. From 22nd October, 2010 the respondent authorities extended the benefitof MACP Scheme to the applicants. It is the contention of the applicants that the next promotional scale in the promotional hierarchy was that of Assistant Conservator of Forests(Selection Grade) which was in the pay scale of Rs.1560-39100 with Grade Pay of Rs.6600 during the VIth Central Pay Commission and they ought to have been given the Grade Pay of Rs. 6600 as a MACP benefit. But contrary to that they were given the Grade Pay of Rs.4800 only in the pay band of PB-2. The applicants have cited various decisions of C.A.T., Chandigarh Bench and CAT, Guwahati Bench where similar benefits of awarding MACP in the Grade Pay of next promotional post was given, to bolster their case as the respondent authorities did not award them the Grade Pay of Rs.6600 but awarded only the Grade Pay of Rs.4800/-. Being aggrieved they have approached this court for redressal of their grievances.

3. Per contra, it is the case of the respondent authorities that as per the MACP Scheme, it is only the next Grade Pay in the hierarchy of

Grade Pay which has to be given and not theGrade Pay of the next post in the promotional hierarchy. In para 2 of the MACP Scheme annexed as Annexure-I to the Scheme issued by the Government of India, DOP& T vide O.M. No.35034/3/2008-Estt.(D) dated 19.05.2009 is set out below-

> *"2. The MACPS envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section 1, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. Thus, the grade pay at the time of financial upgradation under the MACPS can, 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."***

Therefore, In the case of the applicants the respondent authorities have given the next higher Grade Pay of Rs.4800/. and not the Grade Pay of Rs.6600/- attached to the next promotional post of Assistant Conservator of Forests(Selection Grade). The Grade Pay Rs.6600 is to be given only on actual promotion and not on upgradation. Hence, the respondent authorities have prayed for dismissal of the case

4. Heard Id. counsel for the parties and perused the materials placed on record.

5. Issue:-

The point at issue is whether upon stagnation, a person would get the next higher Grade Pay in the hierarchy of Grade Payor in the hierarchy of next promotional post.

6. Findings:-

(a) The Government of India had introduced the Assured Career Progression Scheme (ACP Scheme) during the Vth Central Pay Commission period vide Government of India DOP&T's O.M. No.35034/1/97-Estt.(D) dated 9th August, 1999 to the effect that persons stagnating in a particular scale would be given upgradation of pay in the ***immediate next higher pay scale on completion of 12 years and 24 years of regular service.*** *The ACP Scheme was effective from 09.08.1999 to 31.08.2008.*

(b) During the Vlth Central Pay Commission, the ACP Scheme was modified into the Modified Assured Career Progression (MACP) Scheme, whereby, the persons stagnating in a relevant scale are to be given upgradations to the next higher Grade Pay after completion of 10 years, 20 years and 30 years of ***regular service****. The MACP Scheme came into effect from 01.09.2008.*

(c) The post of Assistant Conservator of Forests carried the pay scale of Rs.2000-350(S-12) which was revised to Rs.6500-10500 in the Vth Central Pay Commission. The post of Assistant Conservator of Forests(Selection Grade) carried the pay scale of Rs.3000-4500(S-19), which was revised to Rs.10,000-15200 in the Vth Central Pay Commission. Thus, we see there is a jump from the pay scale of (S-12) to (S-19) on promotion of an officer from Assistant Conservator of Forests to Assistant Conservator of Forests(Selection Grade) during the Vth Central Pay Commission. During the Vlth Pay Commission, as per the recommendation, the scale of Assistant Conservator of Forests carrying the pay scale of Rs.6500-10500(S-12) was replaced by PB-2 (Rs.9300-34800 with Grade Pay of Rs.4200) and the pay of the Assistant Conservator of Forests (Selection Grade) carrying the pay scale of Rs. 10,000-15,200 (S-19) was replaced by PB-3(Rs.15,600-39,100 with Grade Pay of Rs.6600/-).

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

(i) The findings of CAT., 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****."*

CAT., 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 CAT, 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 MACP Scheme such financial upgradations are envisaged by the completion of 10/20 and 30 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 CAT. 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 CAT., Chandigarh Bench which was upheld by the Hon'bje High Court of Punjab and Haryana, i.e. MACP benefits in the promotional hierarchy.*

*(iii) The Guwahati Bench of CAT. 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 CAT. and the Punjab and Haryana High Court. The decisions taken in OA1038/CH/2010 by the Chandigarh Bench of CAT. 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 upgradation upon rendering 12 and 24 years of service were envisaged and under MACP three financial upgradations 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 scale came to be replaced by Pay Band and GP."***

*The order passed by the Principal Bench of CAT. in **O.A.904/2014 (Sanjay Singh & Ors. vs. Union of India & Ors.) was stayed by the Hon'ble Delhi High Court in W.P(C) 4662/2013 delivered on 26.07.2013.***

(iii) The order passed by Guwahati Bench of C.AT 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.

(iv) 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 UOI 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 CAT., Chandigarh Bench as also that of Principal Bench in the matter of* ***Ved Prakash****. Here also, the MACP benefits were given by allowing the Grade Pay in the next promotional scale. This view of CAT., 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 24.06.2013 agreed with the findings of C.A.T., 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 to Appeal No. 8271/2014 arising out of the impugned final judgment and order dated 24.06.2013 in OP (CAT) No. 2000/2013 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 the Hon'ble High Court on 08.08.2014.*

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

(g) On the other hand, the Delhi High Court in ***WP (C) 3420/2010 (R.S. Sengor&Ors. vs. Union of India &Ors.)*** *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." The judgment is extracted hereunder for ready reference:-*

> *"1. Prior to the implementation of the Pay-Bands recommended by the 6th Central Pay Commission, Inspectors in CISF were placed in the Pay-Scale Rs. 6,500-200-10,500/- till 31.5.2005 which was upgraded to Rs. 7,450-225-11,500/- with effect from 1.1.2006 and with the promulgation of the new*

Pay-Scales after 6th Central Pay Commission gave a report, Inspectors were placed in the Pay Band II i.e. Rs. 9,300-34,800/- + Grade Pay of Rs. 4,600/-. It is apparent that the erstwhile concept of pay scale stands replaced by the concept of Pay Band.

2. The earlier Assured Career Progression Scheme which was in force till 31.8.2008 envisaged two financial upgradations as per DOPT OM dated 9.8.1999; the first upgradation after completing 12 years' service and the second after completion of 24 years' service.

3. Relevant would it be to note that under the Assured Career Progression Scheme the financial upgradation was by way of fixation of the pay prescribed for the promotional post in the hierarchy.

4. With the implementation of the Pay Bands after the 6th Central Pay Commission made recommendations, ***various erstwhile pay scales were merged in a common Pay Band and a higher grade pay was given to the posts with onerous and higher responsibilities.*** *The Assured Career Progression Scheme was replaced by the Modified Assured Career Progression Scheme (MACPS) as per DOPT OM dated 19.5.2009 which envisaged 3 financial upgradations, the first after 10 years of service, the second after 20 years of service and the third after 30 years of service.*

5. Para 2, 8 and 8.1 of the Modified Assured Career Progression Scheme (MACPS) 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 nextpromotion post in the hierarchy of the concerned cadre/organization will be given only at the time of regular promotion.***
>
> *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 `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."

6. 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."***

7. Noting the relevant facts Inspectors in the Pay Band 2 Rs. 9,300-34,800/- get a Grade Pay of Rs. 4,600/- have been granted under the MACPS the first financial upgradation by retaining the Pay Band but giving the Grade Pay Rs. 4,800/-. Their grievance as raised in the writ petition is that they are entitled to the Grade Pay Rs. 5,400/- and to highlight the basis of their claim it is to be noted that the next hierarchical post i.e. that of Asst. Commandant is in Pay Band Rs. 15,600-39,100/- with Grade Pay Rs. 5,400/-. It be clarified that they do not claim a right to be placed in the Pay Band Rs. 15,600-39,100/- but claim benefit of the Grade Pay of the said Pay Band and it is apparent that the basis of the claim is paragraph 2 of the MACPS which states that the Scheme envisages placement in the immediate next higher Grade Pay hierarchy.

8. It be noted that the erstwhile pay scales S-9 to S-15 which ranged between Rs. 4,500-7,000/- to Rs. 7,500-12,000/- have all been placed in Pay Band 2 i.e. Rs. 9,300-34,800/- with Grade Pays Rs. 4,200, Rs. 4,600 and Rs. 4,800/-.

9. Thus, the respondents state that they have correctly granted MACPS benefit by upgrading the Grade Pay of Inspectors from Rs. 4,600/- to Rs. 4,800/-.

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. 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.

12. The writ petition is dismissed.

13. No costs."

(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&Ts 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 CAT., 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 hierarcy 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 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 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 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 benefit of 2nd financial upgradation under the MACP Scheme by order dated 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 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 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. 15600-39100 (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 the recent judgement of the Hon'ble 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 Hon'ble 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 Hon'ble 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 negatived 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 Grade 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."*

12. Shri B. Mishra Learned counsel for the respondents points out that an identical question has been articulated by the Hon'ble 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 Hon'ble 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 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 Hon'ble High Court of Delhi ***Swaranpal Singh and Others v. Union of India and Others****, we find that the Hon'ble High Court answered the above question at para 19 of the said judgment, 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 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 judgment, 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 Band-1 but 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:*

> *"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 Hon'ble 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 31.05.2011 in O.A. No. 1038/CH/2010 in the case of Raj Pal vs. Union of India and Others on the file of Chandigarh Bench of the Tribunal;*
>
> *(ii) Order dated 26.11.2012 in O.A. No. 904/2012 in the case of Sanjay Kumar vs. Union of India and Others on the file of Principal Bench of CAT, New Delhi;*
>
> *(iii) Order dated 11.09.2015 in O.A. No. 101/2015 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 08.09.2015 in O.A. No. 1586/2014 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 O.A. No. 1038/CH/2010 was subject matter before the Hon'ble Punjab and Haryana High Court in CWP No. 19387/2011 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 SLP [(CC) 7467/2013]

preferred against the order of Hon'ble High Court of Punjab and Haryana was dismissed by the Hon'ble Supreme Court by judgement dated 15.04.2013 and the matter has attained finality. He argues that in view of the fact that the judgement 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 judgement dated 15.04.2013, the submission of Shri B. Mishra cannot be entertained. The thrust of Shri B.A. Vaishnav is that the judgement 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) 7467/2013] 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 O.A. No. 816/2012 and the Hon'ble Tribunal allowed the same vide order dated 29.01.2013 by following the order of the Chandigarh Bench dated 31.05.2011 in O.A. No. 1038/CH/2010, affirmed by the Punjab and Haryana High Court in its judgement dated 19.10.2011 in CWP No. 19387/2011. The said order of the Ernakulam Bench in O.A. No. 816/2012 was challenged before the Hon'ble High Court of Kerala in OP (CAT) No. 2000 of 2013 which came to be confirmed vide its judgement dated 24.06.2013.* ***The judgement of the Hon'ble High Court of Kerala in O.P. No. 2000/2013 was challenged by the Union of India before the Hon'ble Supreme Court in S.LP. (C) No. 21813/2014 [CC No. 10791 of 2014] and the Hon'ble Supreme Court by the order dated 08.08.2014 was pleased to stay the judgement 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) 7467/2013 by the judgement dated 15.04.2013. In other words, the order of the Hon'ble Supreme Court in SLP [(CC) 7467/2013] 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 judgement 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 judgement of the Kerala High Court in O.P. No. 2000/2013 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 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 Hon'ble 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 Hon'ble 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 (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 Hon'ble High Court of Delhi and Hon'ble 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 Hon'ble 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 Ho'ble 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. Hon'ble High Court of Punjab and Haryana did not refer to the judgement of Hon'ble 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 Hon'ble 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 Hon'ble 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 Court's view****. Further, Hon'ble 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.*
>
> *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 upgradtaion 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."

(i) The applicants in their pleadings in para 4(l) 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, 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 6th 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."*

2. Therein the issue was that whether the benefit under MACP is available on the hierarchical level as it is available in the ACP. Following the decision of the Hon'ble Delhi High Court in several cases and the decision of the Ahmedabad Bench of the Tribunal, Calcutta Bench held that this benefit is available under MACP on the level of financial upgradation and not in the level available in the ACP and therefore in the circumstances of that case, since the applicant therein had sought for the benefit akin to ACP in MACP also, it was dismissed.

3. The matter seems to be covered by the Office Memorandum issued by the DoPT dated 17.05.2016, which we quote:

"No. 22034/04/2013-Estt.(D)
Government of India
Ministry of Personnel Public Grievance & Pensions
Department of Personnel & Training
***

North Block, New Delhi
Dated: 17.05.2016

Office Memorandum

Subject :- References/Representations/Court Cases in various Ministries/Departments/Organisations for grant of ***MACPS benefits in the promotional hierarchy*** *- reg.*

***

In continuation of Department of Personnel Training's earlier O.M. of even no. dated 20.01.2016 and dated 01.03.2016 on the above mentioned subject, the undersigned is directed to forward a copy of the decision dated 28.04.2016 of Hon'ble CAT, Calcutta Bench in OA No. 351/00195/2014 filed by Shri S.H.K. Murti & Others Vs. UOI & Ors whereby the demand of the applicant for MACP in promotional hierarchy has been dismissed, for necessary action and compliance. The Hon'ble Tribunal in the aforesaid decision dated 28.04.2016 has held 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.

2. All Ministries/Departments are requested to upload it on their websites for wider publicity.

Sd/-
(G. Jayanthi)
Director (E-I)
Phone No. 23092479"

4. Therefore the matter is covered completely and fully in all its elements. Applicant is eligible to that financial upgradation under MACP not as available to ACP but as available under the differentia granted for MACP. It is so declared. Therefore, the audit objection will not lie under law. All the consequences of audit objection is hereby quashed.

5. The matter is also covered by Annexure-A24 Office Memorandum issued by the DoPT along with clarification wherein in clarification 3 (B) the DoPT had explained how the matter should be resolved. It is available in No.

35034/3/2008-Estt. (D) dated 09.09.2010 which we quote:

"No 35034/3/2008-Estt (D)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel & Training)
(Establishment (D)

North Block, New Delhi
Dated: 9th September,2010

OFFICE MEMORANDUM

SUBJECT: MODIFIED ASSURED CAREER PROGRESSION SCHEME (MACPS) FOR THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES - CLARIFICATIONS REGARDING.

The undersigned is directed to invite reference to the Department of Personnel and Training Office Memorandum of even number dated the 19th May,2009 regarding the Modified Assured Career Progression Scheme (MACPS). Consequent upon introduction of the Scheme, clarifications have been sought by various Ministries/Departments about certain issues in connection with implementation of the MACPS. The doubts raised by various quarters have been duly examined and point-wise clarifications have accordingly been indicated in the Annexure.

2. The MACPS should strictly be implemented in keeping with the Department of Personnel and Training Office Memorandum of even number dated 19.05.2009 read with the aforesaid clarifications (Annexure)

3. All Ministries/Departments may give wide circulation to the contents of this O.M. for general guidance and appropriate action in the matter.

4. Hindi version would follow.

Sd/-
(Smita Kumar)
Director (Estt. I)
Tel.No.23092479

To
1. All Ministries/Departments of the Government of India (As per standard list).

Annexure
[Reference:- Office Memorandum No.35034/3/2008-Estt.(D) dated 09.09.2010]

Sl. No.	***Point of doubt***	***Clarification***
1.	*Whether the Pay Band would change in the hierarchy of Pay Bands*	***Yes.*** *The upgradations under MACPS is to be granted in the immediate next higher grade pay in the hierarchy of*

	& Grade Pay on grant of the benefits under MACPS?	*recommended revised pay band and grade pay as prescribed in the CCS (RP) Rules, 2008*
2.	*Whether the benefits of MACPS would be allowed to the Government servants who have been later on inducted in the Organized Group "A" Service*	***No.** The benefits under MACPS is not applicable to Group 'A' officer of Organised Group 'A' Services, as the officer under Organized Group 'A' Services have already been allowed parity of two years on non-functional basis with the officers of Indian Administrative Service (IAS)*
3.	*How will the benefits of ACP be granted if due between 01.01.2006 and 31 08.2008?*	*The new MACPS has come into existence w.e.f. 01.09.2008 However, the pay structure has been changed w.e.f. 01.01.2006. Therefore the previous ACPS would be applicable in the new pay structure adopted w.e.f. 01.01.2006. Para 6.1 of Annexure-I of MACPS is only for exercising option for coming over to the revised pay structure and not for grant of benefits under MACPS. The following illustrations would explain the position:* ***(A) In the case of isolated post:*** *Date of appointment in entry Grade in the pre-revised pay scale of **Rs.4000-6000**: 01.10.1982* *1st ACP granted on 09.08.1999* ***:Rs.4500-7000 (pre-revised)*** *2nd ACP due on 01.10.2006* ***:Rs.5000-8000 (pre-revised)*** ***[revised PB-2 Grade Pay of Rs.4200]*** *3rd financial upgradation under the MACPS would be due on 01.10.2012 (on completion of 30 years of continuous regular service) in the immediate next higher grade pay in the hierarchy of recommended revised pay band and grade pay i.e. Grade Pay of Rs. 4600 in PB-2.* ***(B) In the case of normal promotional hierarchy:*** *Date of appointment in entry Grade in the pre-revised pay scale of **Rs.5500-9000: 01.10.1982***

		1st ACP granted on 09.08.1999 ***:Rs.6500-10500 (pre-revised)*** *2nd ACP due on 01.10.2006 (as per the existing hierarchy)****:*** ***Rs.10000-15200 (pre-revised).*** ***Therefore, 2nd ACP would be in PB-3 with Grade Pay of Rs.6600 (in terms of hierarchy available).*** *3rd financial upgradation under MACPS would be due on 01.10.2012 in the immediate next higher grade pay in the hierarchy of recommended revised pay band and grade pay of Rs.7600.*
4.	*Whether the benefits of MACPS would be granted from the date of entry grade or from the date of their regular service/approved service counted under various service rules*	*The benefits under MACPS would be available from the date of actual joining of the post in the entry grade.*
5.	*In a case where a person is appointed to an ex-cadre post in higher scale on deputation followed by absorption, whether the period spent on deputation period would be counted as continuous service in the grade or not for the purpose of MACPS*	*(i) Where a person is appointed on direct recruitment/deputation basis from another post in the same grade, then past regular service as well as past promotions/ACP, in the earlier post, will be counted for computing regular service for the purpose of MACPS in the new hierarchy.* *(ii) However, where a person is appointed to an ex-cadre post in higher scale initially on deputation followed by absorption, while the service rendered in the earlier post, which was in a lower scale cannot be counted, there is no objection to the period spent initially on deputation in the ex-cadre post prior to absorption being counted towards regular service for the purposes of grant of financial upgradation under MACPS, as it is in the same Pay band/grade pay of the post.*
6.	*Whether the pay scale/grade pay of substantive post would be taken into account for appointment/selection*	*The pay scale/grade pay of substantive post would only be taken into account for deciding the eligibility for appointment/selection to a higher post on deputation basis.*

	to a higher post on deputation basis or the pay scale/grade pay carrying by a Government servant on account of financial upgradation(s) under ACP/MACP Scheme.	
7.	*In a case where 1st/2nd financial upgradations are postponed on account of the employees not found fit or due to departmental proceedings, etc. whether this would have consequential effect on the 2nd/3rd financial upgradation or not.*	*Yes. If a financial upgradation has been deferred/postponed on account of the employee not found fit or due to departmental proceedings, etc., the 2nd/3rd financial upgradations under MACPS would have consequential effect.* ***(Para 18 of Annexure-I of MACPS referred).***
8.	*In a case where the Government servant have already earned three promotions and still stagnated in one grade for more than 10 years, whether he would be entitle for any further upgradation under MACPS*	*No. Since the Government servant has already earned three promotions, he would not be entitled for any further financial upgradation under MACPS.*
9.	*Whether the pre-revised pay scale of Rs.2750-4400 in respect of Group 'D' non-matriculate employees, would also be taken as merged to grade pay of Rs.1800 for the purpose of MACPS in view of merger of pre-revised pay scales of Rs.2550-3200, Rs.2610-3540, Rs.2610-4000 and Rs.2650-4000, which have been upgraded and replaced by the revised pay structure of grade pay of Rs.1800 in the pay band* ***PB-I.***	*Yes*

10.	*If a Govt Servant on deputation earns upgradation under MACPS in the parent cadre, whether he would be entitled for deputation (duty) allowance on the pay and emoluments granted under the MACPS or not?*	*No. While eligibility of an employee for1 appointment against ex-cadre posts in terms of the provisions of the RRs of the ex-cadre post will continue to be determined with reference to the post/pay scale of the post held in the parent cadre on regular basis (and not with reference to the higher scale granted under ACPS/MACPS), such an officer, in the event of his selection, I may be allowed to opt to draw the pay in the higher scale under ACP/MACP Scheme without deputation allowance during the period of deputation, if it is more beneficial than the normal entitlements under the existing general order regulating pay on appointment on deputation basis.*
11.	*Since the pay scales of Group "D" employees have been merged and placed in the Grade Pay of Rs.1800, whether they are entitled for grant of increment @ 3% during pay fixation at every stage.*	*Yes. On the analogy of point 22 of Annexure-I of MACPS, the pay of such Group "D" employees who have been placed in the Grade Pay of Rs.1800 w.e.f. 01.01.2006 shall be fixed successively in the next three immediate higher grade pays in the hierarchy of revised pay-bands and grade pays allowing the benefit of 3% pay fixation at every stage.*

6. As we examined it, we found that the applicant was first promoted Assistant Director and then as Deputy Director and later this post was merged with that of the Joint Director. This merger will not operate as a promotion. Therefore, he is now eligible for the next grade pay under MACP of Rs. 7600.

7. Therefore, we hold and declare that applicant is eligible for Grade pay of Rs. 7600 benefit to be extended to him within one month next. The benefit which was available to the applicant and granted earlier will be restored to him within two months next without interest and thereafter at the interest at the rate of GPF which is normally available.

8. The OA is allowed. No order as to costs.

(C.V. SANKAR)
MEMBER (A)

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

/ksk/

Annexures referred to by the applicant in OA No. 170/00178/2018

Annexure-A1: Copy of the Office Order dated 30.11.2017
Annexure-A2: Copy of the PPO dated 30.11.2017
Annexure-A3: Copy of the show cause notice dated 04.08.2017
Annexure-A4: Copy of the reply to show cause notice dated 21.08.2017
Annexure-A5: Copy of the CCS (Revised Pay) Rules 2008 dated 29.08.2008
Annexure-A6: Copy of the DoPT OM dated 19.05.2009
Annexure-A7: Copy of the Office Order dated 03.11.2003
Annexure-A8: Copy of the pay fixation order dated 11.12.2008
Annexure-A9: Copy of the office order dated 05.03.2012
Annexure-A10: Copy of the office order dated 21.02.2013

Annexure-A11: Copy of the DoPT OM dated 06.02.2014
Annexure-A12: Copy of the DoPT OM dated 02.03.2016
Annexure-A13: Copy of the order dated 11.05.2016 issued by Ministry of Textiles
Annexure-A14: Copy of the Hon'ble Apex Court order in Civil Appeal No. 11527 of 2014 dated 18.12.2014
Annexure-A15: Copy of the DoPT OM dated 17.05.2016
Annexure-A16: Copy of the order in OA No. 18/2015 dated 16.10.2015 by Hon'ble Central Administrative Tribunal, Ahmedabad Bench.
Annexure-A17: Copy of the 111th SFC Minutes dated 24.08.2016
Annexure-A18: Copy of the last pay drawn for the month of November, 2017

Annexures with reply statement

Nil

Annexures with rejoinder
Annexure-A19: Copy of the letter dated 29.11.2017
Annexure-A20: Copy of the order in OA No. 351/00195/2014
Annexure-A21: Copy of the letter dated 29.11.2013
Annexure-A22: Copy of the letter dated 22.01.2016
Annexure-A23: Copy of the order passed by Central Administrative Tribunal, Bangalore Bench in OA No. 1252 – 1256 of 2014 dated 20.01.2016

Annexures with additional reply statement

Nil

Annexures with additional rejoinder
Annexure-A24: Copy of the OM dated 09.09.2010

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