

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

**Present: Hon'ble Mr.Gokul Chandra Pati, Member (A)
 Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

OA/ 260/921/2016 MA/260/564/2017 MA/260/230/2019	Danita Sabar, aged about 58 years, S/o Late Kantina Sabar, permanent resident of Vill Tarjayesing, PO - Sindiva, PS - Seranga, Dist. - Gajapati, presently working as MTS, Survey of India, Odisha G.D.C., Bhubaneswar.
OA/260/44/2017 MA/260/512/2017	Bhramarabar Tripathy, aged about 65 years, S/o Late Mahadev Tripathy, permanent resident of Vill. Udayanathpur, PO/PS - Kakatpur, Dist. - Puri and retired on superannuation as MTS/TL, Survey of India, Odisha G.D.C., Bhubaneswar.
O.A./260/45/2017 M.A./260/509/2017	Sachidananda Pattanaik, aged about 64 years, S/o Late Laxmidhar Mohanty, permanent resident of Vill./PO-Olasingh, PS/Dist.- Khurda and retired on superannuation as MTS/TL, Survey of India, Odisha GDC, Bhubaneswar.
O.A./260/49/2017 M.A./260/511/2017	Panchanan Das, aged about 66 years, S/o Late Bhramara Das, permanent resident of Bidyadharpur, PO - Nuabazar, PS - Chauliaganj, Dist. - Cuttack and Retired on superannuation as MTS/TL, Survey of India, Odisha G.D.C., Bhubaneswar.
O.A./260/50/2017 M.A./260/475/2017 M.A./260/510/2017	Jairam Barik, aged about 63 years, S/o Late Sarat Chandra Barik, permanent resident of Shrikrushna Nagar, 42-Mouza, PO - Khinkiria, PS - Cuttack Sadar, Dist. - Cuttack and retired on superannuation as MTS/TL, Survey of India, Odisha GDS, Bhubaneswar.
O.A./260/87/2017 M.A./260/565/2017	Pramod Kumar Pattanaik, aged about 58 years, S/o Late Sarat Chandra pattanaik, permanent resident of Vill. Seragada Govindpur, PO - govindpur, PS - Patapur, presently working as MRS/Non-Tech., Survey of India, Odisha G.D.C., Bhubaneswar.
O.A./260/218/2017 M.A./260/193/2017 M.A./260/474/2017	Shankar Mallia, aged about 59 years, S/o Eswar Malliam, permanent resident of At/PO - Mahatab Rd., Lingaraj Nagar, Plot No. 259, Bhubaneswar, presently working as MTS/Non-Tech., Survey of India, Odisha GDC, Bhubaneswar.
O.A./260/918/2016	Prasana Kumar Mohapatra, aged about 57 years, S/o Late Kanduri Mohapatra, permanent resident of Vill. - Bijipur, PO-Bentapur, PS-Bramhagiri, Dist.- Puri and Presently working as MTS, Survey of India, Odisha GDC, Bhubaneswar.

O.A./260/919/2016 M.A./260/476/2017	Bhimsen Nayak, aged about 57 years, S/o Late Arakshita Nayak, permanent resident of Vill. LIV-269, Dumduma, Phase-IV, PS - Khandagiri, Bhubaneswar-19 and retired on superannuation as MTS, Survey of India, Odisha GDC, Bhubaneswar.
O.A./260/920/2016 M.A./260/508/2017	Abhimanyu Nayak, aged about 63 years, S/o Late Mangulu Nayak, permanent resident of Housing Board Colony, Dumduma, L-510, Phase-II, PS – Khandagiri, Bhubaneswar-19 and retired on superannuation as MTS, Survey of India, Odisha GDC, Bhubaneswar.
O.A./260/922/2016	Satya Prakash Parida, aged about 58 years, S/o Sri Gopinath Parida, permanent resident of Vill – Mansara, PO – Rambag, PS/Dist – Jajpur and present working as MTS, Survey of India, Odisha GDC, Bhubaneswar.
O.A./260/923/2016 M.A./260/525/2017	Sahadev Maharana, aged about 59 years, S/o Late Bharat Maharana, permanent resident of Vill. –Kokala, PO – Gabanasta, PS – Cuttack Sadar, Dist. – Cuttack, presently working as MTS, Survey of India, Odisha GDC, Bhubaneswar.
O.A./260/948/2016 M.A./260/524/2017	Bhagirathi Chanda, aged about 65 years, S/o Late Krushna Chanda, permanent resident of Vill – Bajarapur, PO – Baliapal, PS – Bansgada, Dist. – Bhadrak and retired on superannuation as MTS/Non-Tech., Survey of India, Odisha GDC, Bhubaneswar.
O.A./260/950/2016 M.A./260/505/2017	Nirab Chandra Das, aged about 64 years, S/o Late Pirat Das, permanent resident of Vill.-Padma Keshari-Pur, PO – Kalarahanga, PS – Mancheswar, Dist. – Khurda and retired on superannuation as MTS/Non-Tech., Survey of India, Odisha GDC, Bhubaneswar.
O.A./260/951/2016 M.A./260/470/2017 M.A./260/522/2017	Chandramani Sethi, aged about 66 years, S/o Late Kashinath Sethi, permanent resident of Vill – Kalamari, PO-Lendura, PS-Nemala, Dist. – Cuttack and retired on superannuation as MTS/TL, Survey of India, Odisha GDC, Bhubaneswar.
O.A./260/952/2016 M.A./260/520/2017	Janardan Parida, aged about 61 years, S/o Late Bimbadhar parida, permanent resident of Vill – Mana-Sarada, PO – Rambag, PS/Dist. – Jajpur and retired on superannuation as MTS/Non-Tech., Survey of India, Odisha GDC, Bhubaneswar.
O.A./260/953/2016 M.A./260/507/2017	Abhimanyu Naik, aged about 64 years, S/o Late Golekha Naik, permanent resident of At/PO-Patia (Bjhoisahi), PS – Chandrasekharapur, Bhubaneswar-24 and retired on superannuation as MTS/Non-Tech., Survey of India, Odisha GDC, Bhubaneswar.
O.A./260/954/2016 M.A./260/523/2017	Pradipta Kumar Kar, aged about 62 years, S/o Late Krushna Chandra kar, permanent resident of Vill.

Adhikandapur, PO – Patalada, PS – Astaranga, Dist. – Puri, and retired on superannuation as MTS/TL, Survey of India, Odisha GDC, Bhubaneswar.

O.A./260/955/2016
M.A./260/563/2017
M.A./260/516/2017

Dhirendra Kumar Behera, aged about 65 years, S/o Late Hadibandhu Behera, permanent resident of Vill.-Kalianti, PO-Chaigopal, PS-Mahanga, Dist. – Cuttack and retired on superannuation as MTS/TL, Survey of India, Odisha GDC, Bhubaneswar.

O.A./260/975/2016
M.A./260/518/2017

Parsuram Rout, aged about 61 years, S/o Late Dhani permanent resident of Qr. No. 848, Phase-II, Dum Duma Housing Board Colony, PS – Khandagiri, Bhubaneswar-19 and retired on superannuation as MTS/Non-Tech., Survey of India, Odisha GDC, Bhubaneswar.

O.A./260/976/2016
M.A./260/517/2017

Dharmananda Prusty, aged about 63 years, S/o Sri Krupasindhu Prusty, permanent resident of Plot No. 1066, Shiv Nagar, Tankapani Road, PS – Badagada, Bhubaneswar and retired on superannuation as MTS/Non-Tech., Survey of India, Odisha GDS, Bhubaneswar.

O.A./260/977/2016
M.A./260/521/2017

Surendra Behera, aged about 64 years, S/o Late Dhoba Behera, permanent resident of Plot No. 385, Lingaraj Nagar, Old Town, Bhubaneswar-2 and retired on superannuation as MTS/Non-Tech., Survey of India, Odisha GDC, Bhubaneswar.

O.A./260/978/2016
M.A./260/506/2017

Abhimanyu Chhinchani, aged about 61 years, S/o Sabha Chhinchani, permanent resident of Vill/PO/PS Rayagada, Dist. – Gajapati and retired on superannuation as MTS/Non-Tech., Survey of India, Odisha GDC, Bhubaneswar.

O.A./260/119/2018
M.A./260/227/2018

Sarat Chandra Behera, aged about 65 years, S/o Late Bata Behera, Plot No. 408/68, College Road, PO-Puru-Nagarh, Dist. – Deogarh.

VERSUS

Respondents in OA 918/16, 919/16, 920/16, 921/16, 922/16, 923/16, 975/16, 87/17, 218/17

1. Union of India represented through its Secretary to Government of India, Ministry of Science & Technology, Technology Bhawan, New Mehrauli Road, New Delhi – 110016.
2. The Surveyor General of India, Surveyor General's Office, Hathibarkala Estate, Post Box No.37, Dehradun, Uttarakhand – 248001.
3. Additional Surveyor General (Eastern Zone), Survey of India, 15 Wood Street, Kolkata – 16.
4. The Director, Survey of India, Odisha G.D.C., Survey Bhawan, Bhubaneswar-13.

Respondents in OA 948/16, 950/16, 951/16, 952/16, 953/16, 954/16, 955/16, 976/16, 977/16, 978/16, 44/17, 45/17, 49/17, 50/17, 119/18

1. Union of India represented through its Secretary to Government of India, Ministry of Science & Technology, Technology Bhawan, New Meharauli Road, New Delhi – 110016.
2. The Surveyor General of India, Surveyor General's Office, Hathibarkala Estate, Post Box No.37, Dehradun, Uttarakhand – 248001.
3. The Director, Survey of India, Odisha G.D.C., Survey Bhawan, Bhubaneswar-13.

For the applicants: Mr.S.K.Ojha, counsel (for all OAs except for OA 119/18)
Mr.S.K.Nayak, counsel
Mr. M.K.Khuntia, counsel (OA 119/18)

For the respondents: Mr.S.Behera, counsel (OA 921/16, 955/16, 44/17, 87/17, 119/18)
Mr.D.K.Mallick, counsel (OA 951/16, 953/16, 977/16, 45/17)
Mr.J.K.Nayak, counsel (OA 952/16, 49/17)
Mr.A.K.Mohapatra, counsel (OA 50/17, 919/16)
Mr.C.M.Singh, counsel (OA 920/16, 922/16)
Mr.G.R.Verma, counsel (OA 918/16, 954/16)
Mr.B.Swain, counsel (OA 950/16, 976/16)
Mr.P.K.Mohanty, counsel (OA 218/17, 978/16)
Mr. S.B.Mohanty, counsel (OA 923/16)
Mr.M.R.Mohanty, counsel (OA 948/16, 975/16)

Heard & reserved on : 15.5.2019

Order on : 17.5.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

In these OAs, the issues involved and reliefs claimed are same or similar and the applicants were initially appointed in the technical/non-technical side. It is seen that Mr. S. Behera, learned counsel for the respondents has filed the MA No. 231/2019 in OA No. 921/2016 requesting to club all the pending OAs together for consideration and disposal as the OAs are similar. This MA is allowed and the OAs were taken up and heard together in two batches, one batch of OAs (OA No. 921/16, 119/18, 44/17, 45/17, 49/17, 50/17, 918/16, 919/16, 920/16, 922/16, 923/16, 951/16, 954/16 and 955/16) involving the employees belonging to the technical side and other batch of OAs (OA No. 87/17, 218/17, 948/17, 950/17, 952/16, 953/16, 975/16, 976/16, 977/16 and 978/16) pertaining to the employees from non-technical side. All these OAs are being disposed of by this common order for which, the OA No. 921/2016 has been taken as the leading OA for the applicants from the technical side and the OA No. 87/2017 is taken as the leading OA for the applicants from non-technical side.

2. Before proceeding to examine the leading OAs, we will discuss briefly the reliefs prayed for in the OAs and the basic facts for some of the OAs which are similar to other OAs.

2.1 In the **OA No. 44/2017**, following reliefs are sought for by the applicant:-

- “(i) To admit this OA and call for the records;
- (ii) To quash the office order communicated under letter dated 19.10.2016 (Annexure A/8)
- (iii) To modify the office order dated 8.5.2012 (Annexure A/6)
- (iv) To direct the respondents to extend the 2nd financial upgradation to the applicant under the ACP Scheme w.e.f. 1.1.2006 in GP-2400/- and 3rd financial upgradation under the MACP Scheme w.e.f. 1.9.2008 in PB-9300-34800/- with GP-4200/-.
- (v) To direct the respondents to pay the consequential benefit such as arrear with interest;
- (vi) And/or pass any other order/orders as deemed fit and proper.

The applicant in OA No. 44/2017 was initially appointed as unskilled Technical Labourer 1.9.1975 and was promoted to the Semi-Skilled grade on 1.7.1992. He was granted the benefit of 2nd upgradation under the Assured Career Progression (In short ACP) Scheme to the pay scale of Rs. 3200-4900 (pre-revised scale) which was revised to PB-1 with the Grade Pay (in short GP) of Rs. 2000/- w.e.f. 1.9.1999. Due to merger of pay scales w.e.f. 1.1.2006 after implementation of 6th CPC recommendations, the pay scales upto Rs. 2750-4400/- were merged to the PB-1 with GP of Rs. 1800/-. It is the case of the applicant that after such merger of pay scales, his 1st promotion post got merged, for which, the 2nd upgradation to the GP of Rs. 2000/- will be counted as 1st upgradation w.e.f. 1.1.2006 and the applicant will be entitled for 2nd ACP w.e.f. 1.1.2006 to the next higher promotional post with the GP of Rs. 2400/- and after completion of 30 years of service, the applicant will be entitled for 3rd upgradation to the GP of Rs. 4200/- under the Modified Assured Career Progression (In short MACP) Scheme, which replaced the ACP Scheme w.e.f. 1.9.2008. As against the above claim, the applicant was granted 2nd MACP benefit w.e.f. 1.9.2008 to the GP of Rs. 2400/- and 3rd MACP benefit to the GP of Rs. 2800/- w.e.f. 1.9.2008. In the Counter, the respondents stated that the claim of the GP of Rs. 4200/- as 3rd MACP benefit in the promotional hierarchy of post is not admissible. It is also stated in the Counter that the applicant has been granted the ACP and MACP benefits as per the guidelines and the OA is liable to be dismissed.

2.2 In the **OA No. 45/2017**, following reliefs are sought for by the applicant:-

- “(i) To admit this OA and call for the records;
- (ii) To quash the office order communicated under letter dated 19.10.2016 (Annexure A/8)
- (iii) To modify the office order dated 4.1.2009 (Annexure A/5) and office order dated 8.5.2012 (Annexure A/6)

- (iv) To direct the respondents to extend the 1st and 2nd financial upgradation under the ACP Scheme w.e.f. 1.1.2006 & 25.6.2007 in GP-2000/- & 2400/- respectively.
- (v) To direct the respondents to pay the consequential benefit such as arrear with interest;
- (vi) And/or pass any other order/orders as deemed fit and proper.

2.3 In the **OA No. 49/2017**, following reliefs are sought for by the applicant:-

- “(i) To admit this OA and call for the records;
- (ii) To quash the office order communicated under letter dated 19.10.2016 (Annexure A/8)
- (iii) To modify the office order dated 8.5.2012 (Annexure A/6)
- (iv) To direct the respondents to extend the 2nd financial upgradation to the applicant under the ACP Scheme w.e.f. 1.1.2006 in GP-2400/- and 3rd financial upgradation under the MACP Scheme w.e.f. 1.9.2008 in PB-9300-34800/- with GP-4200/-.
- (v) To direct the respondents to pay the consequential benefit such as arrear with interest;
- (vi) And/or pass any other order/orders as deemed fit and proper.

2.4 In the **OA No.50/2017**, the following reliefs are sought for by the applicant:

- “(i) To admit this OA and call for the records;
- (ii) To quash the office order communicated under letter dated 19.10.2016 (Annexure A/8)
- (iii) To modify the office order dated 8.5.2012 (Annexure A/5) and office order dated 26.10.2012 (Annexure A/6).
- (iv) To direct the respondents to extend the 2nd financial upgradation to the applicant under the ACP Scheme w.e.f. 1.1.2006 & 7.10.2006 in GP-2000/- & 2400/- respectively and 3rd financial upgradation under the MACP Scheme w.e.f. 7.10.2012 in PB-9300-34800/- with GP-4200/-.
- (v) To direct the respondents to pay the consequential benefit such as arrear with interest;
- (vi) And/or pass any other order/orders as deemed fit and proper.

2.5 In the **OA No.87/2017** the following reliefs are sought for by the applicant :

- “(i) To admit this OA and call for the records;
- (ii) To quash the office order communicated under letter dated 27.1.2016 (Annexure A/7) and communication dated 4.2.2016 (Annexure A/8)
- (iii) To modify the office order dated 31.5.2011 (Annexure A/5)
- (iv) To direct the respondents to extend the 1st ACP w.e.f. 1.1.2006 in GP-1900, 2nd MACP w.e.f. 1.2.2009 in GP-2400/-.
- (v) To direct the respondents to pay the consequential benefit such as arrear with interest;
- (vi) And/or pass any other order/orders as deemed fit and proper.

2.6 In the **OA No.218/2017**, the following reliefs are sought for by the applicant :-

- “(i) To admit this OA and call for the records;
- (ii) To quash the office order communicated under letter dated 27.1.2016 (Annexure A/7) of the respondent No.3.

- (iii) To modify the office order dated 31.5.2011 (Annexure A/5) and to direct the respondents to extend the 1st ACP w.e.f. 1.1.2006 in GP-1900, 2nd MACP w.e.f. 1.2.2009 in GP-2400/-.
- (iv) To direct the respondents to pay the consequential benefit such as arrear with interest;
- (v) And/or pass any other order/orders as deemed fit and proper.

2.6 In **OA No.918/2016** the following reliefs are sought for by the applicant:-

- “(i) To admit this OA and call for the records;
- (ii) To quash the office order communicated under letter dated 27.1.2016 (Annexure A/9)
- (iii) To modify the office order dated 4.1.2009 (Annexure A/5), office order dated 7.5.2012 (Annexure A/6) & office order dtd. 9.9.2013 (Annexure A/7).
- (iv) To direct the respondents to extend the 1st and 2nd financial upgradation under the ACP Scheme w.e.f. 1.1.2006 & 25.6.2007 respectively granting GP- 2000/- & 2400/- from respective dates and 3rd financial upgradation under the MACP Scheme w.e.f. 25.6.2013 in PB-9300-34800/- with GP-4200/-.
- (v) To direct the respondents to pay the consequential benefit such as arrear with interest;
- (vi) And/or pass any other order/orders as deemed fit and proper.

2.7 In **OA No.919/2016**, the following reliefs are sought for by the applicant:-

- “(i) To admit this OA and call for the records;
- (ii) To quash the office order communicated under letter dated 27.1.2016 (Annexure A/9)
- (iii) To modify the office order dated 4.1.2009 (Annexure A/5), office order dated 7.5.2012 (Annexure A/6) & office order dtd. 9.9.2013 (Annexure A/7).
- (iv) To direct the respondents to extend the 1st and 2nd financial upgradation under the ACP Scheme w.e.f. 1.1.2006 & 29.6.2007 respectively granting GP- 2000/- & 2400/- from respective dates and 3rd financial upgradation under the MACP Scheme w.e.f. 29.6.2013 in PB-9300-34800/- with GP-4200/-.
- (v) To direct the respondents to pay the consequential benefit such as arrear with interest;
- (vi) And/or pass any other order/orders as deemed fit and proper.

2.8 In **OA No.920/2016**, the following reliefs are sought for by the applicant:-

- “(i) To admit this OA and call for the records;
- (ii) To quash the office order communicated under letter dated 19.10.2016 (Annexure A/8)
- (iii) To modify the office order dated 8.5.2012 (Annexure A/6).
- (iv) To direct the respondents to extend the 2nd financial upgradation to the applicant under the ACP Scheme w.e.f. 1.1.2006 in GP-2400/- and 3rd financial upgradation under the MACP Scheme w.e.f. 29.3.2009 in PB-9300-34800/- with GP-4200/-.
- (v) To direct the respondents to pay the consequential benefit such as arrear with interest;
- (vi) And/or pass any other order/orders as deemed fit and proper.

2.9 In **OA No.922/2016**, the following reliefs are sought for by the applicant:-

- “(i) To admit this OA and call for the records;
- (ii) To quash the office order communicated under letter dated 27.1.2016 (Annexure A/6)
- (iii) To modify the office order dated 4.1.2009 (Annexure A/3), office order dtd. 1.5.2012 (Annexure A/4)
- (iv) To direct the respondents to extend the 1st financial upgradation under the ACP Scheme w.e.f. 1.1.2006 in GP-2000/- and 2nd financial upgradation under the MACP Scheme w.e.f. 5.12.2011 in GP-4200/-.
- (v) To direct the respondents to pay the consequential benefit such as arrear with interest;
- (vi) And/or pass any other order/orders as deemed fit and proper.

2.10 In **OA No.923/2016**, the following reliefs are sought for by the applicant:-

- “(i) To admit this OA and call for the records;
- (ii) To quash the office order communicated under letter dated 27.1.2016 (Annexure A/8)
- (iii) To modify the office order dated 7.5.2012 (Annexure A/6)
- (iv) To direct the respondents to extend the 2nd financial upgradation to the applicant under ACP Scheme w.e.f. 1.1.2006 in GP-2400/- and 3rd financial upgradation under MACP Scheme w.e.f. 30.3.2009 in PB-9300-34800/- with GP-4200/-/-.
- (v) To direct the respondents to pay the consequential benefit such as arrear with interest;
- (vi) And/or pass any other order/orders as deemed fit and proper.

2.11 In **OA No.948/2016**, the following reliefs are sought for by the applicant:-

- “(i) To admit this OA and call for the records;
- (ii) To quash the office order communicated under letter dated 19.10.2016 (Annexure A/7)
- (iii) To modify the office order dated 31.5.2011 (Annexure A/5)
- (iv) To direct the respondents to extend the 1st ACP w.e.f. 1.1.2006, 2nd MACP w.e.f. 1.2.2009 in GP-2400/-.
- (v) To direct the respondents to pay the consequential benefit such as arrear with interest;
- (vi) And/or pass any other order/orders as deemed fit and proper.

2.12 In **OA No.950/2016**, the reliefs sought for by the applicant are exactly the same as in the OA No. 948/2016.

2.13 In **OA No.951/2016**, the following reliefs are sought for by the applicant:-

- “(i) To admit this OA and call for the records;
- (ii) To quash the office order communicated under letter dated 19.10.2016 (Annexure A/8)
- (iii) To modify the office order dated 8.5.2012 (Annexure A/6)
- (iv) To direct the respondents to extend the 2nd financial upgradation to the applicant under the ACP Scheme w.e.f. 1.1.2006 in GP-2400/- and 3rd financial upgradation under the MACP Scheme w.e.f. 1.9.2008 in PB-9300-34800/- with GP-4200/-.

- (v) To direct the respondents to pay the consequential benefit such as arrear with interest;
- (vi) And/or pass any other order/orders as deemed fit and proper.

2.14 In **OA No.952/2016**, the reliefs sought for by the applicant are exactly the same as in the OA No. 948/2016.

2.15 In **OA No.953/2016**, the reliefs sought for by the applicant are exactly the same as in the OA No. 948/2016.

2.16 In **OA No.954/2017**, the following reliefs are sought for by the applicant:-

- “(i) To admit this OA and call for the records;
- (ii) To quash the office order communicated under letter dated 19.10.2016 (Annexure A/8)
- (iii) To modify the office order dated 8.5.2012 (Annexure A/6)
- (iv) To direct the respondents to extend the 2nd financial upgradation to the applicant under the ACP Scheme w.e.f. 1.1.2006 in GP-2400/- and 3rd financial upgradation under the MACP Scheme w.e.f. 1.9.2008 in PB-9300-34800/- with GP-4200/-.
- (v) To direct the respondents to pay the consequential benefit such as arrear with interest;
- (vi) And/or pass any other order/orders as deemed fit and proper.

2.17 In **OA No.955/2016**, the following reliefs are sought for by the applicant:-

- “(i) To admit this OA and call for the records;
- (ii) To quash the office order communicated under letter dated 19.10.2016 (Annexure A/8)
- (iii) To modify the office order dated 8.5.2012 (Annexure A/6)
- (iv) To direct the respondents to extend the 2nd financial upgradation to the applicant under the ACP Scheme w.e.f. 1.1.2006 in GP-2400/- and 3rd financial upgradation under the MACP Scheme w.e.f. 27.6.2010 in PB-9300-34800/- with GP-4200/-.
- (v) To direct the respondents to pay the consequential benefit such as arrear with interest;
- (vi) And/or pass any other order/orders as deemed fit and proper.

2.18 In **OA No.975/2016**, the following reliefs are sought for by the applicant:-

- “(i) To admit this OA and call for the records;
- (ii) To quash the office order communicated under letter dated 27.1.2016 (Annexure A/8)
- (iii) To modify the office order dated 8.5.2013 (Annexure A/6)
- (iv) To direct the respondents to extend the 1st ACP w.e.f. 1.1.2006 in GP-1900/-, 2nd ACP w.e.f. 1.3.2007 in GP-2400/- and 3rd financial upgradation under the MACP Scheme w.e.f. 1.3.2013 in PB-9300-34800/- with GP-4200/-.
- (v) To direct the respondents to pay the consequential benefit such as arrear with interest;
- (vi) And/or pass any other order/orders as deemed fit and proper.

2.19 In **OA No.976/2016**, the reliefs sought for by the applicant are exactly the same as in the OA No. 948/2016.

2.20 In **OA No.977/2016**, the reliefs sought for by the applicant are exactly the same as in the OA No. 948/2016.

2.21 In **OA No.978/2016**, the reliefs sought for by the applicant are exactly the same as in the OA No. 948/2016.

2.22 In **OA No.119/2018**, the following reliefs are sought for by the applicant:-

- (i) To modify the office order dated 8.5.2012 (Annexure A/7).
- (ii) To direct the respondents to extend the 2nd financial upgradation to the applicant under the ACP Scheme w.e.f. 1.1.2006 in GP-2400/- and 3rd financial upgradation under the MACP Scheme w.e.f. 31.7.2012 in PB-9300-34800/- with GP-4200/-.
- (iii) To direct the respondents to pay the consequential benefit such as arrear with interest;
- (v) And/or pass any other order/orders as deemed fit and proper.

OA No. 921/2016

3. The OA No. 921/2016 has been filed by the applicant praying for the following reliefs, which are common to all the OAs in this batch of OAs:-

- “(i) To admit this OA and call for the records;
- (ii) To quash the office order communicated under letter dated 27.1.2016 (Annexure A/8)
- (iii) to modify the office order dated 8.5.2012 (Annexure A/6)
- (iv) to direct the respondents to extend the 2nd financial upgradation to the applicant under the ACP Scheme w.e.f. 1.1.2006 in GP-2400/- and 3rd financial upgradation under the MACP Scheme w.e.f. 27.6.2010 in PB-9300-34800/- with GP-4200/-.
- (v) to direct the respondents to pay the consequential benefit such as arrear with interest;
- (vi) And/or pass any other order/orders as deemed fit and proper.

4. The basic facts of the OA No. 921/2016 are that the applicant was appointed initially by the respondents on 27.06.1980 as a Technical Labourer (Unskilled) and was promoted as Technical Labourer (Semi-skilled) on 1.7.1991. After introduction of the Assured Career Progression Scheme (in short ACP Scheme), w.e.f. 9.8.1999, the applicant was allowed the benefit of 2nd ACP benefit after completion of 24 years w.e.f. 27.06.2004 and was placed on the pre-revised pay scale of Rs. 3200-4900/-. After implementation of the sixth pay commission report, all Group D posts including the post of Technical (Unskilled) and Technical Labourer (Semi-skilled) were merged to a new pay Band with the Grade Pay of Rs. 1800/-. Thus the pay scales to which the applicant was promoted in 1991 was merged. But the pay scale to which he was financially upgraded in 2004 under ACP Scheme, was revised to the GP of Rs. 2000/- which was not merged w.e.f. 1.1.2006. After the Modified Assured Career Progression Scheme was launched w.e.f. 1.9.2008, the applicant was allowed the 2nd upgradation under the MACP Scheme to the Grade Pay of Rs. 2400/- w.e.f. 1.9.2008 after ignoring his earlier promotion. After completion of

30 years of service on 27.6.2010, the applicant was granted 3rd MACP benefit to the Grade Pay of Rs. 2800/- in the Pay Band PB-1 by the respondents.

5. The applicant, in this OA, represented vide representation dated 2.12.2015 (Annexure-A/7), claiming that w.e.f. 1.1.2006, he is entitled for the 2nd ACP benefit to the Grade Pay (in short 'GP') of Rs. 2800/- and 3rd MACP benefit to the GP of Rs.4200/- in PB-2 as per the promotional hierarchy of posts allowed by the CAG office to their staffs. But in para 8 of the OA, he claims for the GP of Rs. 2400/- w.e.f. 1.1.2006 instead of 2nd MACP benefit to the same GP w.e.f. 1.9.2008. The applicant also claims the 3rd MACP benefit after completion of 30 years of service to the Grade Pay Rs. 4200/- in place of the GP of Rs. 2800/- allowed to him, in the light of the judgment of Hon'ble Punjab and Haryana High Court in the case of Union of India & others vs. Raj Pal & another in CWP No. 19387 of 2011 (O&M) upholding the order of Chandigarh Bench of the Tribunal, in which the benefit of MACP was allowed to the GP applicable to the promotional post of the employee-applicant in that case. When such a claim was rejected by the respondents vide order dated 27.1.2016 (Annexure-A/8) by not forwarding the representations to the higher authorities, the applicant was aggrieved and he filed this OA thereafter.

6. The main ground advanced in the OA pertains to the claim of same benefit of the GP relating to the promotional posts in the hierarchy under the MACP Scheme as per the judgment dated 19.10.2011 (Annexure-A/3) of Hon'ble Punjab and Haryana High Court in the case of Raj Pal (supra), which has also been upheld by Hon'ble Apex Court. The applicant's stand is that being similarly placed as Sri Raj Pal, the applicant should also be extended the same benefit of 3rd MACP benefit to the GP applicable for the promotional post which is Rs. 4200/- in PB-2 place of the GP of Rs. 2800/- in PB-1, which was allowed by the respondents.

7. The respondents in their counter have resisted the grounds advanced by the applicant in the OA, stating that as clarified in the DOPT's letter dated 19.8.2013, the order for granting of financial upgradation under MACP as per the promotional hierarchy in the case of Sri Raj Pal is personal to him and it will not be applicable to others and as a precedent. It is further stated that in similar four cases, the SLPs are pending before Hon'ble Apex Court and the impugned orders have been stayed by Hon'ble Apex Court vide order dated 13.5.2016 (Annexure-R/3 series). It is stated that similar demand for MACP benefit as per the promotional hierarchy has been dismissed by the Tribunal (Calcutta Bench) in OA No. 195/2014 (Annexure-R/2 series).

8. The applicant has filed Rejoinder stating that the decision in the case of Raj Pal (supra) which is upheld by Hon'ble Apex Court is valid and the applicant is

entitled for the 3rd MACP benefit to the GP of Rs. 4200/-. Applicant's claim for the 2nd ACP benefit w.e.f. 1.1.2006 is also reiterated.

9. We have heard learned counsels for both the parties and have perused the pleadings as well as the documents placed on record. Mr. J.K. Nayak and other learned counsels for the respondents have placed before us the circular dated 16.11.2009 of the DOPT by which it was clarified that the promotion or upgradation availed under the merged scales prior to 1.1.2006 will be ignored for the purpose of the MACP Scheme. It was pointed out by Mr. Nayak that for there is no provision for ignoring such promotion/upgradation to merged scales under the ACP Scheme. Per contra, Mr. S.K. Ojha, learned counsel for the applicants has cited the circular dated 9.9.2010 to argue that for the ACP Scheme entitled after 1.1.2006, the promotion/upgradation to the merged scales will be ignored.

10. On identical issues, another OA No. 902/2016 has been already disposed of by this Bench vide order dated 4.4.2019. In OA No. 902/2016, the prayer made by the applicant in that OA was similar to the prayer made in this OA. In both the OAs, the issue was the claim for the 3rd MACP benefit on the basis of the GP applicable for the promotional post of the applicant. But the DOPT circulars dated 16.11.2009 and dated 9.9.2010 were not placed before us in the OA No. 902/2016. In the OA No. 902/2016, this Tribunal vide the order dated 4.4.2019 has held as under:-

"8. In the Counter filed by the respondents, the averments of the applicant about eligibility for GP as per the hierarchy of the posts under MACP has been denied by the Respondents. Regarding the order dated 31.5.2011 of Chandigarh Bench of the Tribunal, it is stated that as per the DoP&T letter dated 19.8.2013, the order granting financial up gradation in the promotional hierarchy under MACP to Shri Raj Pal is personal to him and will not be applicable in general, as stated in paragraph 11 of the counter. In reply to the submission made in in paragraph 11 of the counter, it is stated that persons who qualified the selection test for promotional posts can avail the promotional scale on completion of required number of years as per the ACP Scheme. It is therefore stated that the benefit under MACP cannot be denied by the Respondents in the promotional scale. It is noted from the rejoinder that no specific denial has been made to the contentions that the order in Raj Pal's case is applicable only to the case of the concerned parties and it has no general application as stated in DoP&T letter dated 19.8.2013. It is seen from the facts of the cited case, Sri Raj Pal was working in an isolated post and his upgradation of scale was under consideration of the Joint Committee of the respondents as noted in the order of Hon'ble High Court. Hence, factually the case of Raj Pal cited by the applicant is distinguishable.

9. The applicant in para 4.10 of the OA has claimed the benefits of upgradation under ACP/MACP as discussed at para 5 above. In reply, the respondents in para 10 of the counter have not denied the entitlement of the applicant for 1st ACP benefit w.e.f. 1.1.2006 and 2nd benefit under ACP to GP of Rs. 2400/- w.e.f. 1.7.2007, but denied his claim for the GP of Rs. 4200/- under 3rd MACP benefit instead of rs. 2800/- allowed to him. It is stated in para 10 of

the counter that "as per the provision of MACP Scheme next grade pay in the hierarchy is to be granted and not the next higher Pay Band or Scale...." In reply to these averments in para 10 of the counter, the applicant in para 4 of the Rejoinder has stated that the persons who qualified the selection test specified for promotion will be promoted and the persons who could not qualify the selection test will be allowed financial upgradation after completion of required number of years of service. The averments in para 10 of the counter regarding the provisions of the MACP Scheme for grant of next higher GP in the hierarchy of Pay Bands have not been refuted convincingly by the applicant.

10. From the discussions above, taking into account the guidelines of the MACP Scheme and taking into account the fact that the order of the Tribunal in the case of Shri Ral Pal will not have general application as per the DOP&T guidelines dated 19.8.2013 as discussed in para 8 above, we are unable to agree with the reasons advanced by the applicant that he will be entitled for the GP applicable for next promotional post as per the hierarchy for 3rd financial upgradation under MACP Scheme. This is one of the fundamental difference between the ACP and MACP Schemes. The benefit of financial upgradation under ACP Scheme is available subject to fulfilling the eligibility norms as applicable for promotion. But the stipulation for fulfilling the eligibility norm for promotion is not necessary for MACP Scheme as the benefit under MACP are not linked to the promotional hierarchy of posts of a cadre. Hence, the applicant's claim for 3rd MACP benefit to the GP of Rs. 4200/- is not admissible as per the guidelines of DOP&T for the MACP Scheme.

11. Regarding the claim of the applicant for 1st ACP benefit to the GP of Rs. 2000/- w.e.f. 1.1.2006 and 2nd ACP benefit to the GP of Rs. 2400/- w.e.f. 1.7.2007 instead of from 1.7.2007 and 1.9.2008 as allowed already, the respondents have not been able to furnish any ground to deny the claim. As per the guidelines of the MACP Scheme, above claim of the applicant is admissible and there is no justification for allowing 1st ACP benefit w.e.f. 1.7.2007 since it is available from 1.1.2006 since after 6th Pay Commission report, applicant's promotional grade merged with his entry grade, for which such promotion granted prior to 1.1.2006 are to be ignored for ACP Scheme. Similarly, after completion of 24 years of regular service on 1.7.2007, the applicant is eligible for 2nd ACP benefit to GP of Rs. 2400/- instead of 2nd MACP benefit allowed to the applicant w.e.f. 1.9.2008 vide order dated 8.5.2012 (Annexure-A/6).

12. In the circumstances, the applicant is not eligible for the claim of the GP of Rs. 4200/- w.e.f. 1.7.2013 under 3rd financial upgradation benefit under the MACP. But he is entitled for 1st ACP and 2nd ACP benefits w.e.f. 1.1.2006 and 1.7.2007 respectively as discussed in para 11 above, which will be allowed by the respondents to the applicant within three months from the date of receipt of a copy of this order. Accordingly, the OA is allowed in part as above. There will be no order as to cost."

11. The DOPT circular dated 16.11.2009 cited by the respondents' counsel provided that the promotion or upgradation to the merged scales prior to 1.1.2006 will be ignored for the purpose of the MACP Scheme. It was argued by learned counsel for the respondents that since it specifically provides that promotion or upgradation to the merged scales prior to 1.1.2006 will be ignored for the purpose of the MACP Scheme, it will not apply to the ACP Scheme. We are not inclined to agree with such contention of the respondents' counsel. Both ACP and MACP Schemes are measures to address the problem arising out

of stagnation of the employees in some departments due to inadequate promotional posts. The DOPT circular dated 9.9.2010 is clear that the benefits under the ACP Scheme can be considered if it falls due on or after 1.1.2006 and before 1.9.2008 subject to fulfilling the eligibility criteria for the promotional post. If while considering such ACP due after 1.1.2006, the promotion/upgradation to the merged scales prior to 1.1.2006 are not ignored for the purpose of the ACP, then the ACP Scheme cannot address the problem of stagnation of such employees who were promoted to the posts in the merged pay scales. Hence, it will be incorrect to say that the promotion/upgradation in the merged pay scales prior to 1.1.2006 will not be ignored for the purpose of the ACP Scheme, while the same will be ignored for the purpose of the MACP. Further, the circular dated 16.11.2009 of the DOPT does not specifically state that such promotions prior to 1.1.2006 to the posts for which the pay scales are merged after 1.1.2006, will not be ignored for the purpose of the ACP Scheme.

12. Since the facts of the OA No. 921/2016 are similar to the facts in the OA No. 902/2016 and in both the cases, the employees were initially appointed as Technical Labourer (Unskilled) and availed similar promotion and upgradation benefits and they have similar grievances and reliefs sought, the case of the applicant in OA No. 921/2016 is squarely covered under the order dated 4.4.2019 of this Tribunal in OA No. 902/2016. It is not the case of the respondents that the applicant in OA No. 921/2016 was ineligible for the ACP or MACP Scheme. Hence, following the order dated 4.4.2019 of the Tribunal, we hold that the applicant in the present OA will not be entitled for the claim of the GP of Rs. 4200/- under the 3rd financial upgradation benefit under the MACP Scheme as claimed in the OA. However, he will be entitled for consideration for the 2nd ACP benefit to the GP of Rs. 2400/- w.e.f. 1.1.2006 in Pay Band-1 in place of 1.9.2008.

OA No. 87/2017

13. In the OA No. 87/2017, the applicant had initially joined as a Khalasi (Non-Technical) on 1.02.1989. He was allowed 1st upgradation under ACP Scheme to the pay scale of Rs. 2610-4000/- which merged with his earlier post after 1.1.2006 with the GP Rs. 1800/- in PB-1. Hence, the applicant claims the 1st financial upgradation benefit under the ACP Scheme w.e.f. 1.1.2006 with the GP of Rs. 1900/- and 2nd financial upgradation benefit under the MACP Scheme at the GP of Rs. 2400/- w.e.f. 1.02.2009. But as per the guidelines applicable for the MACP Scheme, he will be entitled

to the GP of Rs. 2000/- which is the next GP to the GP of Rs. 1900/-. The MACP benefit cannot be given in accordance with the GP of the promotional posts as discussed in case of the OA No. 921/2016.

14. In the facts and circumstances as discussed above and taking into account the fact that the applicants belonging to the Technical side are similarly situated as the applicant in OA No. 921/2016 and the applicants belonging to the Non-Technical side are similarly situated as the applicant in OA No. 87/2017, the respondents are directed in all the OAs in this batch to reconsider the case of the applicants (both belonging to Technical and Non-Technical side) for 1st financial upgradation benefit under the ACP Scheme w.e.f. 1.1.2006 as per the guidelines applicable for the ACP Scheme, after ignoring the promotion or upgradation availed prior to 1.1.2006 in the pay scales which got merged with the PB-1 with the GP of Rs. 1800/- from 1.1.2006. Further, the respondents are directed to reconsider the case of the applicants in these OAs for the benefit of 2nd financial upgradation under the ACP Scheme as per the guidelines applicable to the ACP Scheme, after completion of 24 years of regular service or 1.1.2006, whichever is later, after ignoring the promotion/upgradation availed prior to 1.1.2006 in the pay scales which got merged with the PB-1 with the GP of Rs. 1800/- from 1.1.2006 and if any of the applicant completes 24 years of service on or after 1.9.2008, then such applicant will be entitled for the 2nd MACP benefit (instead of ACP benefit) as per the guidelines applicable for the MACP Scheme. This order is to be complied by the respondents within 3 (three) months from the date of receipt of a copy of this order. It is clarified that in accordance with the findings in the OA No. 921/2016, the applicants in all the OAs belonging to technical or non-technical side are not entitled for the benefit of financial upgradation in the Grade Pay applicable for the promotional posts under the MACP Scheme as claimed in these OAs.

15. Accordingly, all the OAs in this batch are allowed in part in terms of the directions in para 14 above.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath

