

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION Nos.286/2017, 287/2017 &
288/2017.

Date of Decision: 06.02.2019.

CORAM: R. VIJAYKUMAR, MEMBER (A)
R.N. SINGH, MEMBER (J)

Shri Madhukar R. Natu,
Assistant Commissioner (Retd.),
R/at B-1/12, Amrutvel Society,
HKM Road, Model Colony,
Pune 411 016. Email mrnatu@gmail.com.

... *Applicant in*
OA 286/2017

Shri Kamalkishor R. Paldiwal,
Assistant Commissioner (Retd.),
R/at Nisarg Pooja, Bldg. 'B',
Flat No.404, Kaspate Vasti, Mankar Chowk,
Wakad, Pune 411 057.
Email id – krpaldiwal@rediffmail.com.

... *Applicant in*
OA 287/2017

Shri Dilip L. Choudhari,
Assistant Commissioner (Retd.),
R/at Flat No.B/15, Bhelke Residency,
Bhelke Nagar, Kothrud, Pune 411 038.
Email Id – dilip chdhr@yahoo.co.in.

... *Applicant in*
OA 288/2017

(In Person)

VERSUS

1. The Union of India,
Through Secretary Ad-IIA
Ministry of Finance Department & Revenue
North Block, New Delhi 110 001.
2. The Central Board of Excise & Customs,
North Block, New Delhi 110 001.
3. The Secretary,
Department of Personnel & Training,
North Block, New Delhi 110 001.

4. The Chief Commissioner of Central Excise,
Mumbai-I, New Central Excise Bldg.,
115 M.K. Road, Opp. Churchgate Station,
Mumbai 400 020.
5. The Commissioner Audit 1, ICE House,
41/A Sassoon Road, Pune 411 001.
6. Principal Commissioner of Central Excise &
Service Tax, Pune-II Commissionerate,
ICE House, 41/A Sassoon Road,
Pune 411 001.

... Respondents

(By Advocate Shri R.R. Shetty)

ORDER (Oral)

Per : R. Vijaykumar, Member (A)

The applicants in these three Original Applications have approached this Tribunal with similar prayers. Since the facts of the case are similar and common issue of pay fixation on the point of law is involved, they are being considered together under a common order with the consent of the applicants and learned counsel for the Respondents.

2. The applicant in OA No.288/2017 argued on behalf of the three applicants and was heard at length. Learned counsel for the respondents was also heard at length.

3. The facts of the case are that the applicants joined as direct recruit Inspectors with the department of Customs

and Central Excise and were promoted as Superintendents in 1998. Taking the case of the lead applicant, he was promoted as Superintendent in 1998. The chronological history of his career and pay fixation is:

Sr. No.	Post	Pay	Effective
1	Direct recruit Inspector	--	15.02.1982
2	Superintendent	Rs.6500-10500/-	30.06.1998
3	Scale Revised Superintendent	Rs.7500-12000	No date.
4	2 nd ACP	Rs.8000-275-13500, orders dt. 04.05.2006	15.02.2006.
5	6 th CPC Pay Fixation Superintendent.	PB-II GP Rs.4800/-	01.01.2006
6	6 th CPC (NFU) (4 years completed in 2002)	PB-II GP Rs.5400/-	01.01.2006
7	2 nd ACP as Superintendent	PB-III GP Rs.5400/-	15.02.2006
8	3 rd MACP as Superintendent.	PB-III GP Rs.6600/- order dated 07.05.2012	15.02.2012
9	Assistant Commissioner.	PB-III GP Rs.5400/- pending orders on 3 rd MACP.	22.10.2014
10	Recovery cancelling MACP granted	by Order dated 3 rd 12.04.2016.	

The above is the case for all persons who were eligible for 2nd ACP, based on date of joining as Inspector between 01.01.2006

and until 29.08.2008, when the 6th Pay Commission orders were issued.

4. Subsequently on review, the financial upgradation due in 2002-04 of PB-II with Grade Pay of Rs.5400/- and made effective from 01.01.2006 was considered to be a financial upgradation which would deny consideration of 2nd ACP for the applicants and further, since the PB-II with Grade Pay of Rs.5400/- and PB-III of Rs.5400/- were considered to be distinct Pay Bands under the MACP, the applicants were held to be ineligible to the 3rd MACP granted in an around in the year 2012.

5. We note from the above and the logic and instructions in the ACP/MACP that if NFU is to be considered a financial upgradation counted towards ACP/MACP, the result would actually have been as below by denying 2nd ACP benefits to the applicants and other officers while granting 3rd MACP in 2012 and to other officers on the applicable dates as below:

Sr. No.	Post	Pay	Effective
1	Direct recruit Inspector	-	15.02.1982
2	Superintendent	Rs.6500-10500/-	30.06.1998
3	Scale Revised Superintendent	Rs.7500-12000/-	No date
4	2 nd ACP	Rs.8000-275-13500, orders dt. 04.05.2006	15.02.2006
5	6 th CPC Pay Fixation Superintendent.	PB-II GP Rs.4800/-	01.01.2006
6	6 th CPC (NFU) (4 years completed in 2002)	PB-II GP Rs.5400/-	01.01.2006
7	2 nd ACP not eligible in view of NFU.		
8	3 rd MACP as Superintendent	PB-III GP Rs.5400/-, orders dt. 07.05.2012.	15.02.2012
9	Assistant Commissioner.	PB-III GP Rs.5400/- Recoveries as relevant.	22.10.2014

6. However, the respondents then adopted a middle road and retained the 2nd ACP while deleting the 3rd MACP evidently because the 3rd MACP granted originally by them conferred a Grade Pay of Rs.6600/- which was in excess of the Grade Pay for an Assistant Commissioner. By doing so, they invited a challenge from the applicants that the 2nd ACP which had placed them in PB-II with

Grade Pay of Rs.5400/- was not in the hierarchy of posts with attached Pay Scales which, in the present case, was the post of Assistant Commissioner which held the Pay of PB-III with Grade Pay of Rs.5400/-. The final result as given by the respondents and which has been challenged, is as below:

Sr. No.	Post	Pay	Effective
1	Direct recruit Inspector		15.02.1982
2	Superintendent	Rs.6500-10500/-	30.06.1998
3	Scale Revised Superintendent	Rs.7500-12000	No date.
4	2 nd ACP	Rs.8000-275-13500 orders dt. 04.05.2006	15.02.2006.
5	6 th CPC Pay Fixation Superintendent.	PB-II GP Rs.4800/-	01.01.2006
6	6 th CPC (NFU) (4 years completed in 2002)	PB-II GP Rs.5400/-	01.01.2006
7	2 nd ACP as Superintendent	PB-III GP Rs.5400/-	15.02.2006
8	Assistant Commissioner.	PB-III GP Rs.5400/- pending orders on 3 rd MACP.	22.10.2014
9	Recovery by cancelling 3 rd MACP granted	Order dated 12.04.2016.	

7. Cases similar to the applicants in these three OAs have been dealt with by different co-ordinate Benches of this

Tribunal and have been considered by the respective jurisdictional High Courts and by the Hon'ble Apex Court in some instances and certain orders have issued and judgments recorded. Adopting the canons of judicial discipline, this Tribunal is however bound by those precedents despite our above observations.

8. The case had been challenged by one Shri Balakrishnan before the Madras Bench of this Tribunal in the year 2014 and orders were obtained in his favour which were confirmed by the Hon'ble High Court of Madras and SLP in this regard was dismissed by the Hon'ble Apex Court. Thereafter, in a subsequent case of one Shri Chandrasekaran, who was placed in identical circumstances with Shri Balakrishnan in the earlier case and with the applicants in the present case, the Madras Bench of this Tribunal considered various clarifications issued by the respondents and dismissed his application. This matter was taken to the Hon'ble High Court of Madras which took into consideration its previous judgment in the

case of Shri Balakrishnan and also considered the various clarifications and circulars issued by the DOPT and the respondents and directed that the respondents should issue a comprehensive clarification on the subject. The Respondents have, thereafter, consulted the DOPT and based on DOPT advise Note No.1135911/2016/CR dated 02.05.2016 they have issued a clarification in their Circular No.F.NO.a-23011/25/2015-Ad.IIA dated 20.06.2015 which comprehends all the issues and previous issues and clarifications issued on the subject. Although this circular has not been specifically impugned in the present application filed by the applicants, it is noted that they have filed a representation with the respondents in August 2016. Further, this matter has received the attention of various Benches of this Tribunal at Chandigarh, Ahmedabad and other places and then has been considered by the Hon'ble High Courts in the respective jurisdictions. In the case of an application

decided by the Ahmedabad Bench of this Tribunal in OA No. 581/2016 & 10 others, that Bench passed a common order in respect of various OAs on 22.09.2017 as follows;

"19. xxxxx For the foregoing, we are of the opinion that judicial discipline demands that we shall not entertain the OA mainly for the following reasons:

(i) that the point that arises for consideration is pending consideration before the Hon'ble Supreme Court in the said (a) SLP No.21803/2014 in Union of India Vs. M.V. Mohanan Nair (supra) and other five SLPs mentioned in the above paragraph,

(ii) that the judgments of the Hon'ble High Court of Punjab and Haryana in which Rajpal (supra) was upheld are stayed by the Hon'ble Supreme Court;

(iii) there exists conflicting views of different high courts,

(iv) we follow the ruling of the Hon'ble Delhi High Court.

23 Accordingly, we decline to entertain the OA since the same would serve no purpose, particularly in view of the facts that the issue is pending consideration before the Hon'ble Supreme Court and the findings in Rajpal (supra) stands stayed by the Hon'ble Supreme Court. The OA stands rejected. There shall be no orders as to costs."

9. Later, this matter went before the Hon'ble High Court of Gujarat at Ahmedabad in Special Civil Application No.4464/2016 and the Hon'ble High Court passed the

following orders on 28.06.2016:

"3. At the outset it is required to be noted that the dispute is with respect to grant of benefit of 3rd MACP Scheme w.e.f. 01.11.2011. It is not in dispute that against the judgment and order passed by Kerala High Court, of which reliance was placed by the petitioner, Special Leave Petition is pending before the Hon'ble Supreme Court. Therefore, as such the aforesaid issue is at large before the Hon'ble Supreme Court and it cannot be disputed that whatever decision of the Hon'ble Supreme Court will bind to all, including the petitioner and the respondent authorities.

4. Under the circumstances and in view of the above, the present petition is disposed of by observing and directing that whatever the outcome of Special Leave Petition(C) No.21813/2014 (CC No.10791/2014) shall be implemented. If the issue is held in favour of the employee the respondents authorities are bound to apply the same in the case of the petitioner and if the issue is held in favour of the department, in that case, nothing further is required to be done by the department.


5. With the aforesaid the present petition is disposed of. However, it is observed that in case the issue is held to be in favour of the employee by the Hon'ble Supreme Court the same benefit be given to the petitioner without in any manner being influenced by any of the observations made in the impugned order."


10. The Respondents have also relied upon an order/judgment dated 28.06.2016 in SLP No.4464/2016 to contend that once the issue is decided by the Hon'ble Apex Court, the same shall be binding upon the parties in the present OAs also.

11. It is also learnt during the hearing


that **SLP No.21803/2014 in Union of India Vs. M.V. Mohanan Nair** and other SLPs continues to receive the attention of Hon'ble Apex Court and in the circumstances, it is considered appropriate that this Bench will also respectfully adopt the views of the Hon'ble High Court of Gujarat at Ahmedabad and we, accordingly pass orders in conformity.

12. In the circumstances, these three OAs are disposed of with the direction that in case the decision of the Hon'ble Apex Court grants a benefit in favour of the said employees, the same benefits shall be given to the applicants herein without any specific need for them to make a further representation in this regard. In the aforesaid terms, the above OAs are disposed without any order as to costs.


(R.N. Singh)
Member (J)


(R. Vijaykumar)
Member (A)

dm.


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