

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.91/2016

This the 25th day of January, 2019

CORAM:- R.VIJAYKUMAR, MEMBER (A)

R.N.SINGH, MEMBER (J)

1. S.B.Shinde, Age 64 Retired as Deputy Commissioner, Pune Commissionerate, B-303, Kumar Puram, Mukund Nagar, Pune-411037.
2. S.V.Chaudhary, Age 64 Retired as Deputy Commissioner Mumbai Zone-I, D-103, Prashal Co-operative Hsg. Soc. Ltd. Sant Janabai Road, Vile Parle Road, vile Parle (E), Mumbai-400056.
3. G.C.Chhabria, Age 63 Retired as Deputy Commissioner Mumbai Zone-I, 6/A-1, Basant Park, Chembur, Mumbai-400071.
4. S.B.Samant, Age 62 Retired as Deputy Commissioner Mumbai Zone-I, 'Suprabhat Bunglow', Near Paranjape Chawl, Shivmandir Section, Ambernath (East)-421501.
5. Y.S.Loni, Age 63, Retired as Deputy Commissioner Mumbai Zone-I, Flat No.703, Building No.A-1, Manik Baug Arched, Opp. Annasaheb Magar Stadium, Udyam Nagar, Pimpri, Pune-411018.

(By Advocate Shri S.G.Agarwal)

...Applicants

Vs.

1. The Union of India, through Central Board of Excise & Customs, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001, Through the Chairperson of the Central Board of Excise & Customs.

2. Commissioner of Central Excise, Thane I Commissionerate, 4th Floor, Navprabhat Chambers, Ranade Road, Dadar (W), Mumbai-400028.

3. Commissioner of Central Excise, Mumbai I Commissionerate, New Central Excise Building, 115, M.K.Road, Opp. Churchgate Station, Mumbai-400020.

4. Commissioner of Central Excise, Mumbai III Commissionerate, 3rd and 4th Floor, Vardaan Trade Centre, Wagle Industrial Estate, Thane(W) 400604.

(By Advocate Shri R.R.Shetty)

...Respondents

Reserved on :- 21.01.2019

Pronounced on:- 25.1.2019

O R D E R**R. Vijaykumar, Member (A)**

This application was filed on 16.1.2013 under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :-

" It is therefore prayed that this Hon'ble Tribunal, in the interest of justice, be pleased to direct the respondents to grant third financial upgradations to the applicants with effect from 01.09.2008 and extend all consequential benefit including payment of arrears of amounts due as per such revision and releasing of subsequent increments and pass such other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of case".

2. The applicants career details are summarised in the following table:

Name	Date of joining	Post to which appointed	Date of Promotion as Supdt	Date of Promotion/ Joining as Assistant Commissioner	Date of promotion as Dy. Commissioner	Date of Retirement
S.B.Shinde	22/03/74	Inspector Central Excise	01/04/91	29/08/05	30/06/09	31/01/11
S.V. Chaudhary	14/03/74	Inspector Central Excise	27/03/91	29/08/05	19/11/10	31/10/11
G.C. Chhabria	25/03/74	Inspector Central Excise	19/07/91	22/10/05	NA (2010?)	30/09/12
S.B. Samant	18/03/74	Inspector Central Excise	27/03/91	08/01/07	31/01/12	30/06/13
Y.S. Loni	03/01/74	Inspector Central Excise	29/04/91	13/09/05	NA (2010?)	31/07/12

3. The grievance of the applicants is that after they were promoted as Dy. Commissioner on conclusion of five years subsequent to becoming

respect of officers who are deprived of the benefits of MACPS due to their induction into the organised Group A Services at a later stage of their service.

2. The issue has been considered by this Department in consultation with Department of Expenditure. It has been decided to allow grant of financial up-gradation under MACPS with effect from the due date to those officers who are inducted to the Organized Group 'A' Services when they are nearing retirement subject to the condition that only at the time of retirement an evaluation of up-gradations/promotions earned by the officer would be made. In case such officers have already attained three financial upgradations under MACP Scheme, they shall not be entitled for NFU to the same grade from a later date".

5. An identical issue has already been considered by this Tribunal in OA No.756/2016 decided on 22.1.2019 in **Sayed Salimuddin Muniruddin v. The Union of India and Ors.**, which considered both the aspect of the benefits conferred by the above clarification and the aspect of discrimination and recorded the following orders:

9. The applicant has argued that there was discrimination. Such an argument of discrimination can only be made in terms of the Scheme itself or in terms of FR 22. With the latter not being applicable for beneficiaries of MACP, the former aspect has to be seen strictly in terms of the provisions of the MACP Scheme. From these standpoints, the plea of the applicant fails. Moreover, the extension of the MACP Scheme to Group-B Officers promoted at the fag end of their career to Group-A Cadre is a beneficial provision made clearly as a dispensation for such categories of officers. Despite the additional provision, even this enabling measure is only under the MACP Scheme and therefore, an argument of discrimination cannot be permitted to be made by categories of

group A officers as Assistant Commissioner, they retired before getting any NFU benefits ~~at~~ par with IAS officers two years juniors to their batch as provided by DOP&T.

4. The pointed grievance of the applicants is that they received a promotion as Dy. Commissioner with the higher GP of Rs.6,600/- from the date of promotion, whereas those officers who did not get promotion as Dy. Commissioner and retired as Assistant Commissioners received the 3rd MACP after completion of 30 years of service or w.e.f. 1.9.2008. As a result, the promoted and senior officers received less pay on the notional date of 1.9.2008 because of the 3rd MACP granted to such juniors who were not promoted as Dy. Commissioners and this was purely the result of the clarification issued by the Department of Personnel and Training in reference no.35034/10/2011-Estt.(D) dt. 13.6.2012 which extended the benefit of MACP to Group 'A' services as below:

"In terms of clarification given o point of doubt no. 2 of Annexure of this Department's O.M. dated 09.09.2010, no benefits under the MACPS would be applicable to Group A officers 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 the Indian Administrative Service (IAS). In this regard, this Department is in receipt of a number of references from various Departments in

Officers such as the applicant. Of course, it is apparent that whereas the alleged batch mates and juniors received the benefit from 01.09.2008, the applicant received it only from 19/21.11.2010 but that is a creation of the relaxation made in the MACP Scheme for such officers and, as argued above, it cannot be the basis for any claim for parity by the applicant nor can this Tribunal extend any relief on the basis of equity considering that it does not have any jurisdiction in equity.

10. In the circumstances, the OA is dismissed as lacking in merits without any order as to costs.

6. In this context, the applicant has relied on certain judgments that depend on the decision of the Hon'ble High court of Punjab and Haryana and the Hon'ble Apex Court in Commissioner and Secretary to Government of Haryana and Ors. v. Ram Sarup Ganda and Ors. 2006(12)SCALE 440. We have had occasion to examine this case by reference to the ACP Scheme of the Government of Haryana and found that on the facts of the matter, the ACP Scheme of the Government of Haryana was completely different from the ACP Scheme of the Government of India and the former State Government's scheme did not contain any provision barring application of FR 22(1)(a)(i). The ACP Scheme of the Government of India, however, has the specific provision and therefore, the Scheme and the rules contained therein which have the force of statute shall be binding on issues relating to it as per settled law. Therefore, as already held in the identical case of **Sayed Salimuddin Muniruddin**

(supra) recourse cannot be sought from FR 22(1)(a)
(i) by the applicant for obtaining benefits contrary
to the provisions of MACP Scheme.

7. In view of the above, the OA is dismissed as
lacking any merits without any order as to costs.

(R.N. SINGH)
MEMBER (J)

(R.VIJAYKUMAR)
MEMBER (A)

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