

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

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

OA No. 206 of 2015

1. Sri Rudra Prasana Rath, aged about 50 years, son of Late Jagannath Rath, permanently residing At/Po-MIG-4/6, AryaVihar, Bhubaneswar-4, Dist-Khurda presently working as Audit Officer.
2. Sri Dhiraj Debaraj Sahu, aged about 46 years, son of Ladu Kishore Sahu, permanently residing Plot No- 197, Laxmisagar, Bhubaneswar, Dist- Khurda, presently working as Audit Officer.
3. Sri Samir Kumar Panda, aged about 47 years, son of Late Bhaskar Chandra Panda, permanently residing Plot No- KC/8, Kharvel Complex, Khandagiri, Bhubaneswar, Dist- Khurda, presently working as Audit Officer.
4. Sri Upendranath Das, aged about 48 years, son of Krushna Chandra Das, permanently residing At/Po-Alla (Kabirpatna), Dist. Jagatsingpur presently working as Audit Officer.
5. Sri Sudhakar Mohapatra, aged about 48 years, son of late Bhimsen Mohapatra, permanently residing At/Po-Khuntubandha, Via-Mandhatapur, Dist-Nayagarh, presently working as Audit Officer.
6. Sri Bhabani Prasan Nayak, aged about 50 years, son of Ram Chandra Nayak, permanently residing At-Kharagpur, Po- Kalashrigopalpur, Dist-Jajpur, presently working as Audit Officer.
7. Sri Ram Narayan Ray, aged about 46 years, son of Late Rajkishore Ray, permanently residing At. Type-II-444, New AG Colony, Po-Nayapalli, Bhubaneswar-12, Dist. Khurda, presently working as Audit Officer.
8. Sri Prakash Chandra Sabat, aged about 56 years, son of Late Biswanath Sabat, permanently residing At/Po-Bhanjanagar, Dist-Ganjam, presently working as Audit Officer.
9. Sri Bhabagrahi Paikray, aged about 48 years, son of Bhimsen Paikray, permanently residing At- Nabakalebar Road, Po/Dist-Puri, presently working as Audit Officer.
10. Sri Pradeep Kumar Hazary, aged about 52 years, son of Bhikshyakari Hazary, permanently residing At/Po-Kesharpur, Dist.Nayagarh, presently working as Audit Officer.
11. Sri Ratnakar Samal, aged about 44 years, son of Musha Samal, permanently residing At. Nayakanidihi, Dist- Bhadrak, presently working as Audit Officer.
12. Sri Pradipta Kumar Khatoi, aged about 50 years, son of Late Bansidhar Khatoi, permanently residing At. Jamara, PO-Balidokan, Dist- Puri, presently working as Audit Officer.
13. Smt. Jyostna Dhal, aged about 46 years, W/o- Debadutta Behura, permanently residing At. Plot No-503, Bhubaneswar, Dist. Khurda presently working as Audit Officer.
14. Sri Biswanath Tarai, aged about 44 years, son of Akrura Chandra Tarai, permanently residing At. Gunupur Patana, Po- Gunupur Jaria, Dist- Kendrapara, presently working as Audit Officer.
15. Sri Brajakishore Behera, aged about 44 years, son of Nabakishore Behera, permanently residing At/Po- Bandhadiha, Dist-Jajpur, presently working as Audit Officer.

16. Sri Bibekananda Das, aged about 50 years, son of Late Niraj Kumar Das, permanently residing At. Dhaneswar, Dist. Jajpur, presently working as Sr. Audit Officer.
17. Sri Rajendra Kumar Das, aged about 48 years, son of Late Jagannath Das, permanently residing At/P.O. Nayagarh, Dist- Nayagarh, presently working as Audit Officer.
18. Sri Abakash Khatua, aged about 47 years, son of Madan Mohan Khatua, permanently residing At- Kananvihar, Bhubaneswar, Dist- Khordha, presently working as Audit Officer.
19. Sri Babaji Charan Pradhan, aged about 52 years, son of Late Kangali Charan Pradhan, permanently residing At- Napanga, Po- Bada Mula Basanta, Dist-Kendrapara, presently working as Sr. Audit Officer.
20. Sri Rajkishore Mohapatra, aged about 48 years, son of Padmalochan Mohapatra, permanently residing At-Baunshamukha, Po-Basta Dist- Khurda, presently working as Audit Officer.
21. Smt. Swati Panigrahi, aged about 46 years, wife of Debasis Mahapatra, permanently residing At -Badachana Dist-Jajpur, presently working as Audit Officer.
22. Smt. Singdha Mohanty, aged about 50 years, wife of Lingaraj Mohanty, permanently residing At -K8/1003, Kalinga Nagar, Bhubaneswar, Dist-Khurda, presently working as Audit Officer.
23. Sri Chandra Kishore Agrawall, aged about 45 years, son of Late Hemraj Agrawall, permanently residing At-Bhikampur, Po-Parmanpur, Dist- Sambalpur, presently working as Audit Officer.
24. Sri Prasant kumar Dhal-I, aged about 51 years, son of Jambeswar Dhal, permanently residing At-Plot No- 665/4335, Shree Vihar, Bhubaneswar, Dist Khurda, presently working as Sr.Audit Officer.
25. Smt. Sukanti Prava Das, aged about 49 years, wife of Prasant Kumar Dhal-I, permanently residing At -Plot No- 665/4335, Shree Vihar, Bhubaneswar, Dist Khurda, presently working as Sr.Audit Officer.
26. Sri Prafulla Kumar Nayak, aged about 47 years, son of Late Chandramani Nayak, permanently residing At -Govindpur, Po- Kalabuda, Dist- Kendrapara, presently working as Audit Officer.
27. Sri Pradeepta Kumar Mohapatra, aged about 46 years, son of Baisnabacharan Sahoo, permanently residing At- Panelua, Ps-Tirtol, Dist- Jagatsingpur, presently working as Assistant Audit Officer.
28. Sri Bhibhuti Bhusan Patra, about 46 years, son of Brajabandhu Patra, permanently residing At/Po-Bhanavgarh Dist- Khurda, presently working as Audit Officer.
29. Sri Bijay Kumar Praharaj, about 55 years, son of Ananta Ch. Praharaj, permanently residing At-665, Baramunda Village, Bhubaneswar, presently working as Audit Officer.
- 29(a). Sri Gopal Krishna Maharatha, about 58 years, son of Late Antaryami Maharatha, permanently residing At /PO- Gallery, Dist- Ganjam, presently working as Sr. Audit Officer.

30. Sri Kanhu Charan Sahu, about 58 years, son of Gaurishankar Sahu, permanently residing At –Kunjelpada, Po-Jharuapada Dist- Sambalpur, presently working as Sr. Audit Officer.
31. Sri Srimanta Kumar Panda, aged about 44 years, son of Lalit Mohan Panda, permanently residing at Near DAO Office, At/Po-Kuchinda, Dist- Sambalpur, presently working as Audit Officer.
32. Sri Sribatsa Baliarsingh, aged about 51 years, son of Dhaneswar Nayak, permanently residing At-Kaliabeda, Po-Raghunathpur, Dist- Keonjhar, presently working as Audit Officer.
33. Sri Nityananda Lenka, aged about 51 years, son of Bansidhar Lenka, permanently residing At-Jamara, Po- Baghuni, via- Asureswar, Dist- Cuttack, presently working as Audit Officer.
34. Sri Biswanath Majhi, aged about 47 years, son of Dusasan Majhi, permanently residing At-Raghunathpur, Po- Jajpur Town Dist-Bhadrak, presently working as Audit Officer.
35. Sri Sanjib Mishra, aged about 47 years, son of Late Jayagopal Misra, permanently residing At/PO-Madhupatna Dist-Cuttack presently working as Audit Officer.
36. Sri Ashok Kumar Sen, aged about 49 years, son of Krushna Chandra Sen, permanently residing At-Gandhinagar (Near CHC), Po- Jatni, Dist- Khordha, presently working as Sr. Audit Officer.
37. Sri Anil Kumar Panda, aged about 49 years, son of Ganga Prasad Panda permanently residing At –Town Hall road, Berhampur, Dist- Ganjam presently working as Audit Officer.
38. Sri Rankanath Mallick, aged about 43 years, son of Jagannath Mallick, permanently residing At/Po- Kusubenti ,Via- Brahmagiri, Dist- Puri, presently working as Sr Audit Officer.
39. Sri Ananda Chandra Nayak, about 48 years, son of Late Gajendra Nayak, permanently residing At Baharbil, PO- Dhusuri Dist- Bhadrak presently working as Sr. Audit Officer.
40. Sri Karunakar Moharana, aged about 46 years, son of Kanhu Charan Moharana, permanently residing at Dihapur, Po- Gadasanpur, Dist- Puri, presently working as Audit Officer.
41. Sri Ramakanta Sahoo, aged about 45 years, son of Duryodhan Sahoo, permanently residing At/Po- Dasarathpur, Dist- Jajpur, presently working as Audit Officer.
42. Sri Rabinarayan Mohapatra, aged about 42 years, son of Biswa Prasad Mohapatra, permanently residing At Plot No- 36, Annpurna Residential Complex , Sheltar Chhak, Tulasipur, Dist-Cuttack, presently working as Audit Officer.
43. Sri Bandhu Lakra, aged about 57 years, son of Late Bailas Lakra, permanently residing At-Pahartoli, Lanjibarna, Dist-Sundergarh, presently working as Audit Officer.
44. Sri Jadabendra Sahoo, aged about 45 years, son of Late Sudersan Sahoo, permanently residing At/PO-Bangida, Dist-Khurda presently working as Sr. Audit Officer.
45. Sri Biswajit Dash, aged about 52 years, son of late Muralidhar Dash, permanently residing at At/Po.Kotsahi, Dist-Cuttack, presently working as Audit Officer.
46. Sri Sibanarayan Mishra, aged about 46 years, son of UN Mishra, permanently residing At/PO- Balabhadrapur Chandanpur, DistPuri, presently working as Audit Officer.

- 47.Smt. Neelam Surin, aged about 53 years, D/o. of Late Mansidh Surin, permanently residing at At-Flat No.77-D,Pocket-A, Phase-2,Mayur Vihar, Delhi presently working as Sr. Audit Officer.
- 48.Sri Kapilash Pradhan, aged about 49 years, Son of Late Baleswar Pradhan, permanently residing At-Malimunda, Po- OSAP Line Jharsuguda, Dist- Jharsuguda, presently working as Audit Officer.
- 49.Sri Bata Krushna Sahoo, aged about 48 years, son of Late RaghabSahoo, permanently residing at Purusottampur, Po- Kabirpur, Dist-Jajpur, presently working as Audit Officer.
- 50.Sri Bishnu Charan Behera, aged about 53 years, son of late Bhagabat Behera, permanently residing At-Nanpur, Po-Godma, Dist- Cuttack presently working as Senior Audit Officer.

...Applicants

OA No. 480 of 2015

1. Sri Jashobant Sahoo, aged about 44 years, son of Late Sudarsan Sahoo, permanently residing At/Po-Bangida, Dist-Khordha, presently working as Audit Officer.
2. Sri Manas Beura, aged about 50 years, son of Sri Dolagovinda Beura, permanently residing At-Nuapatna, Po-Chandol, Dist-Kendrapada, presently working as Audit Officer.
3. Sri Pratap Keshari Burma, aged about 50 years, son of Sri Batakrushna Samal, permanently residing At/Po- Mouda, Dist-Cuttack, presently working as Audit Officer.
4. Sri Ashok Kumar Nanda, aged about 47 years, son of Sri Rabindra Nanda, permanently residing At/Po- Loisingha, Dist- Bolangir, presently working as Audit Officer.
5. Sri Kedar Das, aged about 35 years, son of late Mani Charan Das, permanently residing at Vill-Sunderpur, Po-Korei, Dist-Jajpur, presently working as Audit Officer.
6. Sri Sukadev Khatua, aged about 50 years, son of Sri Babaji Khatua, permanently residing At/Po-Tentol, Via-Bahugram, Dist-Cuttack, presently working as Audit Officer.
7. Sri J Venkata Lakshmana Rao, aged about 47 years, son of late J. Raman Rao, residing At-Gajapati Nagar, Sitapati Lane, Po- Jatni, Dist-Khurda, presently working as Audit Officer.
8. Sri Sadashiba Pani, aged about 58 years, son of late Lokanath Pani, permanently residing At/P.O. Amareswar, Dist-Puri, presently working as Audit Officer.
9. Sri Arun Kumar Sethy, aged about 47 years, son of Sri Nabaghan Sethy, permanently residing At-Nathuabar, Po-Jabara, Dist-Jajpur, presently working as Senior Audit Officer.
- 10.Sri Banambar Behera, aged about 50 years, son of late Sankuli Behera, permanently residing At/Po-Ashok Nagar, Lane-I, Balugaon, Dist-Khordha, presently working as Sr. Audit Officer.
- 11.Sri Subrat Kumar Nayak, aged about 46 years, son of late Batakrushna Nayak, permanently residing At-Benipur, Po-Kisannagar, Dist-Cuttack, presently working as Audit Officer.
- 12.Sri Sudam Charan Panda, aged about 48 years, son of late Trilochan Panda, permanently residing At-Hatapada, Po-Phulbani, Dist-Kandhamal, presently working as Audit Officer.

13. Sri Pitamber Behera, aged about 57 years, son of late Kunjabihari Behera, permanently residing At-Patusahoo Kateni, Po-Kaluri, Dist-Dhenkanal, presently working as Senior Audit Officer.
14. Sri Jayadeb Mohanty, aged about 55 years, son of Late Kailash Chandra Mohanty, permanently residing At/Po-Madhupur, Dist-Cuttack, presently working as Senior Audit Officer.
15. Sri Siva Sankar Prasad, aged about 46 years, son of late Nageswar Prasad, permanently residing At/Po-Keredari, Dist-Hazaribagh, Jharkhand, presently working as Audit Officer.
16. Sri Pradeepta Kumar Pattnaik, aged about 57 years, son of late Sachidananda Pattnaik, permanently residing At-Potapokhari, Po-Nayabazar Dist-Cuttack, presently working as Senior Audit Officer.
17. Sri Prabhat Kumar Das, aged about 54 years, son of late Jugal Kisore Das, permanently residing At -Vasant Vihar (Main Lane), Po-Lochapada, Berhampur, Dist-Ganjam, presently working as Audit Officer.
18. Sri Biliyam Baba, aged about 44 years, son of Sri Nikabin Baba, permanently residing At-Paradhiapali, Po-Sankarna, Dist-Sambalpur, presently working as Audit Officer.
19. Sri Udayanatha Patra, aged about 47 years, son of Sri Pratap Chandra Patra, permanently residing At-Banki, Po-Bijatala, PS- Bisoi, Dist-Mayurbhanj, presently working as Sr. Audit Officer
20. Sri Lala Ajay Kumar Roy, aged about 48 years, son of Sri Lala Madhusudan Roy, permanently residing At-Mulisingh, Po-Harishingpur, Tirtol, Dist-Jagatsingpur, presently working as Asst Audit Officer.
21. Sri Kashinath Panda, aged about 47 years, son of late Buddheswar Panda, permanently residing At-Diniary, Po-Bhogada, Dist-Khordha, presently working as Asst Audit Officer.
22. Sri Bhaskar Chandra Roul, aged about 44 years, son of Sri Satyananda Roul, permanent resident At/Po-Jiral, Dist-Dhenkanal, presently working as Asst Audit Officer.
23. Sri Dhaneswar Sahoo aged about 42 years, son of late Upendra Sahoo permanently residing At-Padmapur, Po-Ganjeibari, PS/Dist-Bhadrak, presently working as Asst Audit Officer.
24. Sri Pitambar Rana, aged about 45 years, son of late Trilochan Rana, permanently residing At-Rouldega, Po-Talsara, Dist-Sundergarh, presently working as Asst Audit Officer.
25. Sri Rajani Kanta Panda, aged about 45 years, son of Sri Dasarathi Panda, permanently residing At-N6/318, IRC Village, Nayapalli, Bhubaeswar, Dist-Khordha, presently working as Asst Audit Officer.
26. Sri Amiya Kumar Mohapatra, aged about 50 years, son of late Anadi Charan Mohapatra, permanently residing At/Po-Redhua, Dist-Jagatsingpur, presently working as Asst Audit Officer.
27. Sri Satyendra Kumar, aged about 43 years, son of late Jadgish Mahto, permanently residing At- Kaswakhar, Po-Rola, Dist-Palamau, Jharkhand, presently working as Asst Audit Officer.
28. Sri Mihir Prasad Parida, aged about 49 years, son of late Kshetramohan Parida, permanently residing At-Chakrapur, Po-Kantpur, Dist-Jajpur, presently working as Asst Audit Officer.
29. Sri Surjya Kumar Garud, aged about 41 years, son of Sri Swapneswar Garud, permanent resident of Kachharpali, Po-Deogaon, Dist-Bolangir, presently working as Asst. Audit Officer.
30. Sri Subrata Kumar Das, aged about 55 years, son of Sri Rajkishore Das, permanently residing at Plot No-G-146, Sector-6, CDA, Markat Nagar, Dist-Cuttack, presently working as Asst. Audit Officer.
31. Sri Alope Rajat Kumar Hans, aged about 44 years, son of Sri Cyril Hans, permanent of Kadma, Po-Khunti, Dist-Khunti, Jharkhand, presently working as Asst. Audit Officer

32. Sri Satyajit Behera, aged about 40 years, son of Sri Guru Charan Behera, permanent of Vill. Kanarpur, Po-Bilikana Gopalpur, Dist-Kendrapara, presently working as Asst. Audit Officer.
33. Sri Bijaya Kumar Sahoo, aged about 40 years, son of Late Narottam Sahoo, permanently residing At -Chakamunda, Po-Jorum, Via-Narasinghpur, Dist-Cuttack, presently working as Asst. Audit Officer.
34. Sri Radhakanta Patnaik, aged about 57 years, son of Late Patitapaban Patnaik, permanently residing At/Po-Kudiary, Dist-Khurda, presently working as Asst. Audit Officer.
35. Sri Ashok Kumar Mahto, aged about 44 years, son of late Nitai Mahto, permanent of Vill-Losera, Po-T.B.Rampur, Dist-Ranchi, Jharkhand, presently working as Asst. Audit Officer.
36. Sri Ganga Ram Maharana, aged about 43 years, son of Late Hari Maharana, permanently residing at Vill-Rango, Po-Barkundia, West Singhbhum, Jharkhand, presently working as Asst. Audit Officer.
37. Sri Subrat Kumar Nayak-II, aged about 32 years, son of Sri Banamali Nayak, permanently residing At/Po-Taras, Rajkanika, Dist-Kendrapara, presently working as Asst. Audit Officer.
38. Sri M. Narasimha Murty, aged about 46 years, son of Late M. V. Ramana Murty, permanently residing At-Gandhi Nagar, 3rd line, S. Kota, Vizianagaram, Andhra Pradesh, presently working as Asst Audit Officer.
39. Sri Ashok Kumar Sahoo, aged about 49 years, son of Sri Nilamani Sahoo, permanently residing At/P.O.Sujanagar Patna, P.S/Dist-Khorda, presently working as Asst Audit Officer.
40. Smt Rajashree Pattnaik, aged about 45 years, wife of Sri Lagnajit Pattnaik, permanently residing At-Orchid Lake Shore Apartment, F/N-201, Tankapani Road, Bhubaneswar, Dist-Khorda, presently working as Asst. Audit Officer.
41. Sri Nabin Chandra Pradhan, aged about 45 years, son of Sri Khireswar Pradhan, permanently residing At/Po-Kuliposh, Via-Khuntagaon, Dist-Sundergarh, presently working as Asst. Audit Officer.
42. Sri Dwarikanath Mahala, aged about 47 years, son of Sri Narayan Mahala, permanently residing At-Balipatna, Po-Kusiapal, Via-Thakur Patna, Dist-Kendrapada, presently working as Asst Audit Officer.

...Applicants

VERSUS

Union of India Represented through its

1. Comptroller and Auditor General of India, Pocket-9, Deen Dayal Upadhyay Marg, New Delhi-24.
2. The Accountant General (G&SSA), AG Square, Bhubaneswar, Dist. Khurda, Odisha, PIN-751001.
3. Principal Accountant General (E&RSA), AG Square, Bhubaneswar, Dist. Khurda, Odisha, PIN-751001.
4. Principal Director Audit (Central), Hyderabad, Odisha Branch, AG Square, Bhubaneswar, Dist. Khurda, Odisha, PIN-751001.

... Respondents

For the applicant : Mr.S.K.Ojha, counsel

For the respondents : Mr.J.K.Mishra, counsel
Mr.S.K.Patra, counsel

Heard & reserved on : 24.4.2019

Order on : 13.5.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The dispute in these OAs is common and similar pertaining to the claim of the Grade Pay (in short GP) of the applicants at par with their juniors in pursuance to previous court orders under similar circumstances. Since the issues in both the OAs are same, these OAs were taken up for consideration together and heard jointly with the consent of the learned counsel for both the sides and both the OAs are disposed of by this common order for which, the OA No. 206 of 2015 is taken as the leading case.

OA No. 206 of 2015

2. There are 50 applicants in this OA, which is filed seeking the following reliefs, which are common to all the applicants:-

- “(i) To admit this OA and call for the records;
- (ii) To quash office order dtd. 16.3.2015 (Annexure A/5) holding that the same is illegal and arbitrary;
- (iii) To direct the respondents to extend the similar benefits revising their pay and placing them in the GP-5400/- from the date i.e. 1.9.2008;
- (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.”

3. This OA as well as the MA filed by the applicants under the rule 4(5) of the CAT (Procedure) Rules, 1987 were heard and disposed of at the admission stage vide order dated 27.4.2015 directing the respondents to extend the benefits of the orders dated 29.12.2010 of Madras Bench of the Tribunal in OA No. 966 & 967 of 2009 (Annexure-A/1) and the order dated 25.2.2015 of Guwahati Bench of the Tribunal in OA No. 8 of 2014 (Annexure-A/3) within a period of three months. The respondents challenged this order of the Tribunal dated 27.4.2015 in W.P. (C) 18946/2015 before Hon'ble High Court, and this Writ Petition was disposed of vide order dated 1.3.2016 setting aside the order dated 27.4.2015 and directing this Tribunal to dispose of the matter afresh after giving opportunity of hearing to both the parties. Thereafter, counter was

called for from the respondents. No Rejoinder was filed by the applicant after filing of the Counter. Then the OA was heard alongwith the OA No. 480/2015.

4. In this OA, the applicants initially joined as Clerk or Auditor under the respondents and after passing the qualifying examinations, they were promoted to the rank of Senior Auditor at higher pay scale. Thereafter, they also qualified in the examination for promotion to the post of the Assistant Audit Officer (in short AAO) before 1.9.2008 with the GP of Rs. 4800/-. The applicants are aggrieved since some other Senior Auditors who could not be promoted as AAO as they could not qualify in the examination, were allowed the benefit of the GP of Rs. 5400/- after being allowed the benefit of MACP Scheme, which was not allowed to the applicants. As a result, the applicants being senior were getting less GP than some Senior Auditors who could not be promoted to the post of AAO, but ended up getting higher GP of Rs. 5400/- compared to the GP of Rs. 4800/- for the applicants. The applicants filed the representation dated 24.9.2014 (Annexure-A/4) for grant of the same GP of Rs. 5400/-. But this representation was rejected by the respondents vide order dated 16.3.2015 (Annexure-A/5), which is impugned in this OA.

5. The OA has advanced the following grounds justifying the reliefs prayed for by the applicants:-

(i) The GP of the senior Auditor is Rs. 4200/-. Those who could not be promoted to the post of AAO due to failure to qualify in the examination, remained in the GP of Rs. 4200/- and after introduction of the MACP scheme w.e.f. 1.9.2008, he would be eligible for 2nd and 3rd MACP benefit after completion of 20 and 30 years of service. The senior auditors, having received one promotion, after 30 years of service or 20 years from the date of promotion to the post of Senior Auditor, would be allowed 2nd MACP benefit raising his GP to Rs. 4800/- and 3rd MACP benefit raising his GP to Rs. 5400/-. But the applicants, having got two promotions would not be eligible for 3rd MACP unless they have completed 10 years from the date of promotion as AAO or 30 years of total service whichever is earlier. Thus, the applicants as AAO would continue in the GP of Rs. 4800/- where as the senior Auditors, who did not qualify for promotion to AAO, can get the GP of Rs. 5400/- through MACP. Being seniors, the applicants claim parity in the GP with their juniors.

(ii) In similar cases, Madras Bench of the Tribunal, vide order dated 9.12.2010 in OA No. 966 and 967 of 2009 (Annexure-A/1) allowed the benefit of same GP to the seniors. This order was implemented by the respondents only for the persons who were parties in the OAs, vide order dated 28.8.2014 (Annexure-

A/2) after the order of the Tribunal was upheld by Hon'ble Madras High Court and Hon'ble Apex Court.

(iii) In a similar case related to Guwahati Bench (OA No. 8/2014), the Tribunal vide order dated 25.2.2015 (Annexure-A/3) of the third Member, the relief of same GP was allowed to the seniors at par with the juniors. In a another similar case, Ranchi Bench of the Tribunal also allowed the OA accepting the order of Madras Bench.

(iv) Other cases cited in support of the OA are as under:-

1. K.I.Shepherd & Others -vs- UOI & Others [AIR 1988 SC 686]

2. K.C.Sarma & Others -vs- UOI & Others [(1997) 6 SCC 721]

3. State of Uttar Pradesh & Ors. -vs- Arvind Kumar Srivastava & Ors. [(2015) 1 SCC (L&S) 191]

(v) Action of the respondents to reject the representation, is against the Article 14 and 16 of the Constitution of India and there is discrimination against the applicants.

6. The respondents opposed the OA by filing the Counter, relying on the following judgments and OMs issued by the DOPT:- (i) Order dated 26.11.2015 of the Principal Bench of the Tribunal in OA No. 436/2015 (Annexure-R/2) rejecting the claim of the employees under similar situation; (ii) Order dated 13.5.2016 of Hon'ble Supreme Court (Annexure-R/3); (iii) OM dated 19.5.2009, 4.11.1993, 9.9.2010 and 10.6.2010 of Govt. of India. (iv) Order dated 22.3.2013 of the Full Bench of Ernakulam Bench in OA No. 1103/2011 & order dated 31.10.2014 of the Tribunal in OA No. 951/2011. (v) Judgment of Hon'ble Supreme Court in the case of Bharat Petroleum Corporation Ltd. & another vs. N.R. Vairamani & another, JT 2004 (8) SC 171. The respondents have averred that the MACP guidelines do not allow stepping up of the pay or GP at par with the juniors, for which the employees, in similar situation as the applicants, have not been allowed the benefit as claimed in the orders of the Tribunal cited in the Counter.

7. No Rejoinder has been filed by the applicants. At the time of hearing of the OAs, learned counsels for both the parties reiterated their stand as in the respective pleadings. Before we proceed to consider the OA, it is seen that the first order dated 21.4.2015 of this Tribunal in this OA, also allowing the MA under rule 4(5) for joint filing of the OA, has been set aside vide order dated 1.3.2016 of Hon'ble High Court. Hence, the MA is to be considered afresh. Since all the applicants in the OA have same grievance and reliefs prayed for

are same for all the applicants, we allow the applicants under the rule 4(5) of the CAT (Procedure) Rules, 1987 to jointly pursue the OA, by allowing the MA.

8. The applicants' case mainly depends on the orders of the Tribunal in similar cases which have been upheld in higher forum and implemented by the respondents only for the persons who were parties to the OA. The order dated 9.12.2010 (A/1) of Madras Bench of the Tribunal relied upon by the applicant has adjudicated the issue and held as under:-

"6. From the records, it is seen that the applicants who were initially appointed as clerks and having been qualified in the departmental examinations at various stages have been promoted to the post of Accountants and Section Officers. Subsequently, the applicants were promoted as Sr. Accountants and Assistant Accounts Officers based on the seniority and all the applicants are holding the post of AAOs. The above facts are admitted by the official respondents in their reply, In the reply it is also admitted that the private respondents have not acquired the qualifying examinations for promotion as Section Officers and accordingly they were stagnated at the level of Sr. Accountants, When the facts are like this, it appears that on introduction of MACP Scheme while implementing the recommendation of the VI pay Commission's recommendations, three financial upgradations were extended to the private respondents. According to the respondents, they are rightly granted the third financial upgradation and the grade pay of Rs.5400/- was given to them based on the eligibility criteria of the above scheme. We are not in agreement that the above reasoning as contended by the official respondents as well as by the private respondents. When the fact remains that the applicants having qualified in the departmental examinations and able to gain further promotions as per the Recruitment Rules and also exercising supervisory role as against the private respondents, we are at loss to note as to how they could be given lesser pay, whereas, the private respondents were given higher pay. We do not find fault with the official respondents by devising the scheme to extend the benefits of such of those employees who are stagnating in service for number of years but that does not mean that in the guise of implementation of the said scheme, persons like the applicants who acquired the necessary qualifications viz., completion of the departmental examinations and gained regular promotions as per Recruitment Rules could be given lesser scale of pay. The private respondents who are holding the position of Sr. Accountants functioning under the control of the applicants cannot be fixed in a grade pay higher than the applicants. In fact, F.R.22 provides for the removal of anomalies by stepping up the pay of seniors when their juniors happened to draw more pay. In the instant case, the private respondents who are functioning inferior than the applicants and who are not even qualified to be promoted to the post held by the applicants are given higher pay scale in the guise of implementation of the scheme which is unsustainable in law.

7. Even though the Apex Court in its decision rendered in Secretary, Finance Department and others v' West Bengal Registration Service Association and others - 1993 SUPP (1)SCC 153 held to the effect that determination of pay scales is the primary function of the executives and not the judiciary, in the very same decision, the Supreme Court has emphasised that the Courts have jurisdiction to grant relief to the aggrieved employees when they are unjustly treated and when the state action is arbitrary. In the instant case, we are of the opinion that the applicants are unjustly treated in as much as higher pay scale is given to the private respondents who are functioning inferior than the applicants and who have not even qualified themselves to be promoted to the posts which are held by the applicants.

8. Even though, we are of the opinion that in the guise of implementation of the scheme, the private respondents are given the higher pay scales than the applicants and one of the relief claimed in the applications is to quash the office memorandum wherein such benefit is extended to the private respondents, in the interest of justice' we do not propose to take away such benefits which are

being extended to the private respondents' However' we are inclined to give relief to the applicants by directing the respondents to extend the benefit of the MACP scheme in favour of the applicants by fixing their grade pay at Rs.5400/- w.e.f. the date on which such benefit was extended to the private respondents'

9. For the reasons stated above' both the applications are disposed of in the following terms :

"There will be a direction to the respondents to grant the revised pay to the applicants by extending the benefit of MACP Scheme in favour of the applicants by fixing their grade pay at Rs.5400/- from the date on which the said benefit was extended to the private respondents and to disburse the accrued arrears, if any, to the applicants within a period of four weeks from the date of receipt of copy of this order. However, there will be no order as to costs."

9. In the order dated 25.2.2015 (Annexure-A/3) in OA no. 8/2014, the third Member of the Tribunal in a similar case allowed the OA with the following observations:-

"2. Admittedly, the applicants are senior and have been promoted thrice and are superior in rank and status but still their juniors who had not passed even the departmental examination for SO (GE), have been granted higher grade pay of Rs.5400/- under the MACP Scheme. Such a question of similarly situated persons was raised before CAT, Madras Bench, wherein by order dated 29.12.2010 in OA 966 and 967 of 2009, the Tribunal had directed to extend the benefit of MACP Scheme to the applicants by fixing their grade pay of Rs.5400/- with effect from the date on which the said benefit was conferred to the private respondents who were their juniors. Needless to say that the official respondents preferred a writ petition before the Hon'ble High Court of Madras vide WP No. 18611 and 18612 of 2011 and Their Lordships vide order dated 19.3.2014 dismissed the writ petition upholding the decision of CAT, Chennai Bench,. The official respondents filed SLP before the Hon'ble Supreme Court challenging the judgment and order passed by the Hon'ble High Court of Madras. The Hon'ble Apex Court vide its order dated 19.8.2014 dismissed the SLP with an observation that they did not find any merit in this petition. Once a decision of Hon'ble High Court of Madras is not set aside by the Hon'ble Apex Court, the judgment becomes authoritative and binding. A similar matter came up before the Hon'ble High Court of Delhi vide WP(C) No. 7840 of 2012 [Tejbir Singh Dagar & Ors. -vs- UOI & Ors.]. There also senior personnel who were deprived of upgradation under MACP Scheme had approached,. The Hon'ble High Court of Delhi referring the condition 8 of ACP Scheme and condition of 20 of MACP Scheme allowing the writ petition, categorically gave a direction to the official respondents for stepping up the salary of seniors in order to bring it at par with that of their juniors and further directed to upgrade the pay of the petitioners from the date their juniors were given higher pay in the same rank.

3. In view of such authoritative pronouncements of Hon'ble High Court of Madras and Hon'ble High Court of Delhi, there is nothing left for this Tribunal to adjudicate except following the ratio propounded by Their Lordships, which is very rudiment embedded in judicial discipline. That apart, this Tribunal cannot venture to take a different view, which the higher Courts have already adjudicated. Learned counsel for the respondents wanted to go through some judgments of Hon'ble CAT, Ernakulam Bench and CAT, Madras Bench. In this context, I can only say that once there is an authoritative pronouncement of Hon'ble High Courts, I cannot venture to take a different view. I have gone through the judgment passed by Hon'ble Member Judicial and not only found it to be rational but also based on precedents and as such, the OA has to be allowed as per the direction given by the Hon'ble Member Judicial. The view of the Hon'ble Member (A) that once there is a clear cut provision in the MACP Scheme under Clause 10, so also under Clause 20 of the annexures of the MACP Scheme, from administrative point of view, there is nothing wrong with the Department in not granting such benefit to the applicants merely because they were senior to some of the persons who have got more grade pay. But the pivotal question that comes for consideration is whether on the face of judicial pronouncements of Hon'ble High Court of Madras and Delhi such a right

cannot be denied merely because there is no provision in the scheme. The Scheme has an administrative direction and not a statutory enactment, whereas judicial pronouncements have binding force and act as statutory directions. Since there is nothing wrong in the MACP circular, consciously Their Lordships have not quashed the provision but have observed where stepping up of pay of seniors can be made to bring it at par with that of their juniors. When juniors are getting more grade pay belonging to the same cadre governed by same seniority list, certainly the seniors have a say and cannot be denied merely because the Scheme does not permit. The Scheme should be in consonance with fundamental right of a senior employee of the same cadre to get at least equal pay than with his juniors. Hence both the issues answered accordingly.

4. In view of the majority view and since I concur with the view expressed by Hon'ble Member (Judicial), the OA is allowed with a direction to the respondents to fix the grade pay of the applicants at Rs.5400/- with effect from the date on which such benefit has been extended to their juniors and the accrued arrears may be disbursed preferably within a period of two months from the date of receipt of a copy of this order. No costs."

10. It is noted that in the OA No. 966 & 967 of 2009 before Madras Bench of the Tribunal, the applicants had challenged the GP of Rs. 5400/- granted to the juniors who were impleaded in the OA as private respondents. But instead of cancelling the benefit already given to the employees, the Tribunal directed that the applicants will also be given the same benefit on the ground that the applicants being senior and after clearing the qualifying examination for promotion to the post of AAO, cannot get less GP than the private respondents who could not qualify the test meant for promotion to the post of AAO. The guidelines of the MACP were not examined in the order dated 9.12.2010 (A/1) of Madras Bench of the Tribunal.

11. The respondents have cited the order dated 26.11.2015 of the Principal Bench of the Tribunal in OA No. 436/2015, which did not allow the OA under similar circumstances. The applicants in OA No. 436/2015 were also the employees under the CAG and there also the Senior Auditors who could not qualify the promotion test for AAO, were allowed the GP of Rs. 5400/- as in the present OA. In that OA, the order dated 9.12.2010 of the Tribunal was also cited by the applicants. In that order almost all the judgments on the subject till date have been discussed and it was held as under:-

"The applicants are Assistant Audit Officer (AAO) with the Comptroller and Auditor General of India. The hierarchy of posts in their cadre is as follows:

"Gradation of Position in the Office of CAG

Clerk

Auditor (PB-I)

(Grade Pay Rs.2800/- having Pay Band of Rs.9300-34800)

Sr. Auditor (PB-II)

(Grade Pay Rs.4200/- having Pay Band of Rs.9300-34800)

On passing SOGE Exam.
Promoted as AAO (PB-II)

(Grade Pay Rs.4800/- having Pay Band of Rs.9300-34800)

Audit Officer (PB-II)

(Grade Pay Rs.5400/- having Pay Band of Rs.9300-34800)

Senior Audit Officer (PB-III)

(Grade Pay Rs.5400/- having Pay Band of Rs.15600-39100)"

2. Senior Auditors/ Senior Accountants are promoted as Section Officer (SO) only on passing of an examination, namely Section Officer Grade Examination (SOGEx). All the applicants have passed this examination and have been promoted as Assistant Accounts Officers (AAOs) in the Grade Pay of Rs.4800/-. The alleged paradox is that those Auditors/ Clerks, who could not pass the SOGE, got the benefit of third upgradation under Modified Assured Career Progression Scheme (MACPS) in the Grade Pay of Rs.5400/-. Therefore, they started getting higher Grade Pay than the applicants though the applicants are their superiors now and also are obviously more meritorious because they cleared the SOGE. The Pay Band for both is the same namely PB-2 i.e. Rs.9300-34800. So effectively superiors are drawing lesser grade pay than their subordinates. When the applicants sought pay protection i.e. Grade Pay of Rs.5400/- as given to Senior Auditors under MACPS, the respondents gave a vague reply dated 26.11.2014 as follows:

- "1. Order for universal implantation of judgment passed by CAT, Bangalore in OA No.489/2011 has not yet been received from the Department of Personnel and Training/ Ministry of Finance.
2. Order for implementation of judgment of CAT, Chennai to similarly placed AAOs is not yet received from the DoPT."

3. Being aggrieved by this order, the applicants have approached this Tribunal with the following prayers:

- "8.a) Applicants may be placed in the same grade pay of Rs.5400/- w.e.f. the same date as has been given to their juniors i.e. Senior Auditor in view of the fact that the OM dated 03.08.2009 has been set aside by the Chennai High Court in W.P. No.18611/2011; and
- b) Pass such other order or orders as this Hon'ble Court deems fit and proper in the interests of justice."

4. The applicants mainly rely on the principle of precedents and for that matter, have cited the following orders/ judgments in their favour:

- (i) Order dated 29.12.2010 in OA Nos.966 and 967 of 2009 of the Madras Bench of the Central Administrative Tribunal in the matter of **S. Prabhu-II and others Vs. Union of India and others**. The issue before the Madras Bench was exactly the same and the Tribunal allowed the OA and directed the respondents to grant the revised pay to the applicants by extending the benefit of MACP Scheme in favour of the applicants by fixing their grade pay at Rs.5400/- from the date on which the said benefit was extended to the private respondents and to disburse the accrued arrears, if any, to the applicants within a period of four weeks....."

.....

13. The question of law here is whether principle of stepping up of pay will apply. Therefore, first of all, we examine the issue of stepping up of pay. It is clear from the rules pertaining to stepping up of pay that stepping up of pay does not mean that in any situation where a superior officer or a senior gets less pay than his subordinate/ junior, his pay has to be brought at par with the junior. There are numerous situations in the government when this may happen. In fact, the DoP&T OM dated 4.11.1993 regarding stepping up of pay cites some such examples and we quote below same as follows:

- "23. Instances which do not constitute an anomaly for stepping up of pay with reference to juniors.- Cases for stepping up of the pay of seniors in a pay scale to that of juniors are generally considered if the following conditions are satisfied:-

(a) both the junior and senior officer should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;

(b) the scales of pay of the lower and higher posts in which the junior and senior officer are entitled to draw pay should be identical;

(c) the anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments or on any other account, the above provisions will not be invoked to step up the pay of senior officer....."

.....

14. Another simple example would illustrate this. When a direct recruit IAS officer joins as SDM on his first posting, it may happen that the second officer (his subordinate) may draw higher pay as a result of his length of service. That does not reduce the authority or control of the SDM as a superior officer. But he cannot claim stepping up of pay. Therefore, on careful reading of the rule position regarding stepping up of pay and the respective Schemes, one would say that such stepping up of pay can be granted only in specific cases, as would be seen from the circular quoted above. We, therefore, are in agreement with the learned counsel for the respondents that this is a case where principle of stepping up of pay would not apply at all. In fact, even if for arguments sake to apply stepping up of pay, we find that the Courts have only guaranteed stepping up of 'pay' and as pointed out by the respondents total pay drawn by applicants is higher. So, there is no contradiction.

15. The other fact that should be noted is that MACP is an antistagnation measure. If a government servant does not get regular promotions to higher posts, then in order to ensure that at least his pay scale (now grade pay) goes up, he is given upgradation in pay scale (now grade pay) without change in his designation and duties. Again in such a situation, it may happen that a junior draws higher pay as a result of this but in no way, it would change the authority of the superior. Moreover, MACP is an 'upgradation' not a 'promotion' as argued by the learned counsel for the respondents. Also, the respondents have clarified that the total pay of the applicants is not less than the pay of their subordinates. It is only the Grade Pay which is different as a result of the MACP Scheme. It is for this reason that para 20 of the MACP Scheme, cited above, specifically provides for such a situation as follows:

"20. Financial upgradation under the MACPS shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employees on the ground that the junior employee in the grade has got higher pay/ grade pay under the MACPS."

16. Therefore, we are of the considered opinion that the claim of the applicants is completely misplaced relying on application of wrong principles which would, in fact, result in double benefit because they would get the benefit of promotion as well as upgradation, which was never the spirit of the MACP Scheme. We, therefore, find no merit in this OA and dismiss the same."

12. After dismissing the OA No. 436/2015, the Principal Bench of the Tribunal held that the Grade Pay of Rs. 5400/- allowed to the Senior Auditors under MACP is not in accordance with the guidelines of the MACP. It observed in the order dated 26.11.2015 as under:-

"17. However, while disposing of this matter, we came across an interesting fact, which is para 20 of the counter affidavit, which reads as follows:

"20. That the Accountants (Entry Grade of Rs.2800/-) who did not pass S.O.G.E. examination and who got their promotions as Senior Accountants (Grade Pay Rs.4200/-), thereafter got their second financial upgradation under ACP Scheme on completion of 24 years to pre-revised pay scale of Rs.6500-10500 (replaced with GP 4800 w.e.f. 1.1.2006) and

subsequently, were granted third financial upgradation to GP 5400 on completion of 30 years of service."

18. What is not clear to us is why the second financial upgradation on completion of 24 years of service was in PB-2 with Grade Pay Rs.4800/- with effect from 1.01.2006? This is so for two reasons:

- (i) The replacement scale of Rs.6500-10500 is PB-2 with Grade Pay Rs.4600/-; and
- (ii) MACP upgradation has to be in the hierarchy of pay band/ Grade Pay and not hierarchy of promotional post. The next hierarchy of Grade Pay after 4200/- is 4600/-.

19. Therefore, on both counts it appears that second upgradation should have been in the Grade Pay of Rs.4600/-, in which case the third upgradation would be in the Grade Pay of Rs.4800/-. In such a situation, the paradox mentioned right in the beginning of this order vanishes. Since this is not an issue before us, we do not pass any direction on this. However, the respondents, if they so desire, may revisit this issue."

13. It is revealed from above that the Senior Auditors were wrongly allowed the GP of Rs. 5400/- under MACP against their entitlement of Rs. 4800/- since the 2nd and 3rd financial upgradation of Senior Auditors (with GP of Rs.4200/-) under the MACP will have to be to the GP of Rs. 4600/- and Rs. 4800/- respectively as observed in the order dated 26.11.2015 of the Principal Bench of the Tribunal. In that case, the GP after 3rd financial upgradation will be Rs. 4800/- instead of Rs. 5400/- and there would be no anomaly as pointed out in the OA. The applicants have not furnished the details of their juniors who were getting the GP of Rs. 5400/-. The respondents in their Counter have not clearly explained with specific example as to how a Senior Auditor with GP of Rs.4200/- after availing two financial upgradations under MACP can get the GP of Rs. 5400/-. One Senior Auditor can get the GP of Rs. 5400/- if his 2nd financial upgradation is under the ACP Scheme after completion of 24 years prior to 1.9.2008, when he will be entitled for the GP of Rs. 4800/- which is as per the promotional post in the hierarchy. But he would not be eligible for 2nd upgradation under ACP to the GP of Rs. 4800/- without clearing the S.O.G.E. examination. Hence, a Senior Auditor of the cadre who has not cleared the S.O.G.E. examination can only be eligible for 2nd upgradation only under the MACP for which clearing the S.O.G.E. examination is not required. But in that case the 2nd MACP benefit will be to the GP of Rs. 4600/- which is the next higher GP to the Rs. 4200/- and not to the GP of Rs. 4800/-. If any of the Senior Auditors has been allowed the benefit of financial upgradation under MACP on or after 1.9.2008 to the GP of Rs. 4800/- and then to the GP of Rs. 5400/- (as mentioned in para 8 of the Counter), then it has been granted by the respondents in violation of the MACP guidelines as observed in the order dated 26.11.2015 and these are liable to be reviewed as per law. The respondents would do well to review such cases where the higher MACP benefit might have been allowed in violation of the guidelines, to the Senior Auditors who have not qualified in the S.O.G.E. examination. Review of such cases is to

be done as per provisions of law and in accordance with the principles of natural justice.

14. Further, the applicants, who are AAO with the GP of Rs. 4800/-, appear to have availed two promotions i.e. from Auditor to Senior Auditor and then to AAO as stated in para 4.1 of the OA. Hence, they might be eligible to be considered for 3rd MACP benefit as per the guidelines of the Scheme, by which, their Grade Pay will also be Rs. 5400/-. It is not mentioned in the pleadings of the parties if the applicants are entitled for 3rd MACP benefit and if so, when they will be eligible to be considered for such benefit. In case the applicants are also eligible for 3rd MACP benefit with the GP of Rs. 5400/- subject to the condition that he is found fit for 3rd MACP benefit as per the guidelines and then there will be no disparity as pointed out in the OA.

15. The judgments cited by the applicants have mainly relied upon earlier judgments in similar cases. Moreover, as discussed in the order dated 26.11.2015 and para 13 of this order, the Grade Pay of Rs. 5400/- has been wrongly allowed to some of the Senior Auditors who could not clear the S.O.G.E. examination under MACP in violation of the MACP guidelines, under which they were eligible for the Grade Pay of Rs. 4800/- under 3rd MACP benefit as discussed in para 13 of this order. Hence, the claim of parity against a benefit allowed in violation of the guidelines of MACP, is not sustainable under the Article 14 and 16 of the Constitution of India as per the law laid down by Hon'ble Supreme Court in the case of **State of Bihar vs. Kameshwar Prasad Singh & Anr (2000) 9 SCC 94**, in which it was held by their Lordship as under :-

"The appeal filed against this judgment was dismissed on the ground of delay and without consideration of the pleas raised on facts. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals other cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. In this regard this Court in *Gursharan Singh & Ors. v. NDMC & Ors.* [1996 (2) SCC 459] held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court. The Court observed:

"Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination."

Again in *Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain & Ors.* [1997 (1) SCC 35] this Court considered the scope of Article 14 of the Constitution and reiterated its earlier position regarding the concept of equality holding:

"Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the respondents."

In *State of Haryana & Ors v. Ram Kumar Mann* [1997 (3) SCC 321] this Court observed:

"The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing mis-appropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly circumstanced person claim equality under Section 14 for reinstatement? The answer is obviously "No".

In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right."

In view of our finding that the judgment of the High Court in the case of *Brij Bihari Prasad Singh* being contrary law was not sustainable and liable to be dismissed, the impugned judgment in the case of *Kameshwar Prasad Singh's* case cannot be upheld. The aforesaid respondent is, therefore, not entitled to any relief as prayed for by him on the analogy of the judgments passed and directions given in *Brij Bihari Prasad Singh's* case."

16. Applying the ratio of the judgment in the case of *Kameshwar Prasad Singh* (supra), the applicants cannot claim parity against the Senior Auditors who have been wrongly allowed the 3rd MACP benefit to the Grade Pay of Rs. 5400/- as discussed in para 13 of this order. In such cases allowing the benefit of the GP of Rs. 5400/- to the applicants at par with Senior Auditors wrongly allowed the GP of Rs.5400/- will perpetuate the illegality.

17. In view of the discussions above and in agreement with the order dated 26.11.2015 of the Principal Bench of this Tribunal in the OA no. 436/2015 (Annexure-R/2 of the Counter), we are unable to allow any relief for parity of Grade Pay as claimed in the OA. However, the respondents are directed to revisit this issue as observed in the order dated 26.11.2015 and in para 13 of this order, to remove the anomalous situation occurring due to wrong

implementation of the MACP guidelines by the respondents and to take appropriate action as per law, as deemed appropriate to prevent such illegalities in future.

18. Both the OA No. 206/2015 and the OA No. 480/2015 are disposed of in terms of direction in para 17 above. There will be no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath