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**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Applicaton No.180/00295/2015**

Wednesday this the 19<sup>th</sup> day of June 2019

**C O R A M :**

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER  
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

1. Padmakumar.M.,  
Foreman (AWS) GZTD,  
Naval Armament Depot, Alwaye,  
NAD P.O., Alwaye – 683 563.
2. Sebastian.C.S.,  
Foreman (AWS) GZTD,  
Naval Armament Depot, Alwaye,  
NAD P.O., Alwaye – 683 563.
3. M.Sathianathan,  
Foreman (AWS) GZTD,  
Naval Armament Depot, Alwaye,  
NAD P.O., Alwaye – 683 563. ...Applicants

**(By Advocate Mr.N.Krishna Prasad)**

**v e r s u s**

1. Union of India represented by the Secretary,  
Ministry of Defence, Lodhi Road,  
New Delhi – 110 001.
2. The Director General of Naval Armament,  
Integrated Headquarters, Ministry of Defence (Navy),  
West Block – V, R.K.Puram, New Delhi – 110 011.
3. The Flag Officer Commanding-in-Chief,  
Headquarters, Southern Naval Command,  
Kochi – 682 004.
4. The Chief General Manager,  
Naval Armament Depot, NAD P.O.,  
Alwaye – 683 563, Kerala.

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5. The ACDA (N) Kochi,  
AAO (Navy), Perumanoor P.O.,  
Varghese Thettayil Cross Road,  
Thevara, Kochi – 682 015. ...Respondents

(By Advocate Mr.N.Anilkumar, SCGSC)

This application having been heard on 10<sup>th</sup> June 2019, this Tribunal on 19<sup>th</sup> June 2019 delivered the following :

### **ORDER**

**HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

The applicants are working in the Naval Armament Depot, Alwaye under the respondents. The grievance of the applicants in the present O.A is that despite being found entitled by the Departmental Screening Committee for the third financial upgradation under MACP Scheme on completion of ten years from the date of the second financial upgradation and sanctioned vide Annexure A-2 dated 16.10.2012 to 13 employees under various NADs in the country, the benefits have not been disbursed to them so far. The benefit of third financial upgradation under MACP Scheme has been duly given to the employees under various NADs except NAD, Alwaye on the basis of the advice received from PCDA (N), Mumbai to the 5<sup>th</sup> respondent that the same cannot be granted on completion of ten years. The service details of the applicants are as below :

Sl.No.	Date of entry in service	Date of first regular promotion	Date of grant of 2 <sup>nd</sup> financial upgradation (w.e.f 1.9.2008)	Date of entitlement for 3 <sup>rd</sup> financial upgradation
Applicant No.1	12/09/85	02/27/91	02/27/01	02/27/11
Applicant No.2	03/07/86	02/27/91	02/27/01	02/27/11
Applicant No.3	07/21/87	09/30/91	09/30/01	09/30/11

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2. The applicants have relied upon Annexure A-3 wherein it is stated that third financial upgradation would be admissible on completion of ten years of service in grade pay from the date of second promotion or at thirty years of service whichever is earlier. The applicants are aggrieved by non grant of third financial upgradation on completion of ten years from the date of second financial upgradation or promotion. They made representations to the respondents which is of no avail. Hence they approached this Tribunal.

3. Notices were issued and the respondents have rendered appearance. In the reply statement it is submitted that as per recommendations of 6<sup>th</sup> Pay Commission, Government of India have implemented Modified Assured Career Progression Scheme with effect from 1.9.2008. There shall be three financial upgradations under the MACPS counted from the direct entry grade on completion of 10, 20 and 30 years service respectively. In this regard DoPT OM dated 19.5.2009 is also relevant. The applicants are citing similar cases where third MACP benefits have been granted on completion of 20 years after first promotion, particularly with reference to Annexure A-2, in respect of employees of NAD, Mumbai. This has been clarified by the respondents by its letter dated 30.6.2015. The benefit of third MACP on completion of 20 years after first promotion is not envisaged in the MACP Scheme. The O.M further clarified that the third financial upgradation under MACP can only be granted on completion of either ten years in the same Grade Pay or 30 years of the service from the initial appointment. The grant of third MACP

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after completion of 20 years from the date of first promotion is not as per the provisions of the Scheme. The applicants were granted second financial upgradation under MACP Scheme with effect from 1.9.2008 and they are entitled for third financial upgradation either on completion of ten years in the same Grade Pay or on completion of 30 years from the date of entry into service and none of the applicants satisfy the mandatory eligibility criteria as laid down by the Government as on date based on which the applicants was claiming third financial upgradation.

4. Heard learned counsel for the parties at length. The short point raised by the applicants in the present O.A is whether they are entitled to grant of third MACP on completion of 20 years after the grant of 1<sup>st</sup> promotion. Learned counsel for the applicant relied upon the judgment passed by the Hon'ble High Court of Delhi in **Union of India & Ors. v. Manju Vashistha & Ors. [WP (C) No.11826/2016]** in support of his case.

It reads thus :

"10. The petitioners have also referred to the clarification given by the Department of Personnel and Training (DoP&T) interpreting the said Scheme. The said opinion, for the sake of clarity, is reproduced below :-

"2. The issue relates to grant of third financial upgradation under MACP Scheme to officials of Delhi Police who have completed 20 years of service after earning first promotion. Specific service details of the officials concerned may be perused at p. 1-2/cor.

3. The basic concept of MACP Scheme is to provide 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> financial upgradations to an employee in consideration of completion of 10/20/30 years of regular service in the same scale/Grade Pay respectively. Regular service for grant of benefits commence from the direct entry grade. The Scheme also provides for grant of financial upgradation whenever a person has spent 10 years continuously in the same grade pay.

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4. Even though the illustrations No. (i), (ii) and (iii) of para 28 of the Scheme suggest that while 2<sup>nd</sup> MACP could be given after overall 18 years and the 3<sup>rd</sup> one after overall 28 years, the fact remains that in both the cases the crucial 2<sup>nd</sup> and 3<sup>rd</sup> MACPS is being given only after the mandatory 10 years residency for the 2<sup>nd</sup> and 3<sup>rd</sup> MACP respectively. Thus, the 3<sup>rd</sup> MACP is intended to be given based on either 10 years from the 2<sup>nd</sup> MACP/Promotion or 30 years of the overall service. Either of these two conditions needs to be fulfilled. In this case, neither of these is fulfilled. The 2<sup>nd</sup> MACP is rightly given on 1.9.2008 - the date of effect of the MACPS itself. Now either 10 years from 01.09.2008 or overall 30 years service will need to be fulfilled for grant of the 3<sup>rd</sup> MACP. Hence, the proposal of the referring Department is not found to be covered within the parameters of the MACP Scheme.

5. In view of the above, it may be clarified that the proposal for grant of third financial upgradation under MACP Scheme to employees who have completed 20 years of service after earning first promotion is not in consonance with the basic concept of the MACP Scheme."

Paragraph 4 of the aforesaid opinion rightly breaks up paragraph 1 of the MACP Scheme. Paragraph 1 of the MACP Scheme states that three financial upgradations shall be counted from the direct entry grade and would be granted on completion of 10, 20 and 30 years of service. It does not specifically stipulate or state that the 10, 20 or 30 years service must be in the same scale/grade pay, as this is not a mandatory or compulsory condition. The second sentence of paragraph 1 of the MACP Scheme specifically states so. This is also apparent from paragraph 3 of the DoP&T clarification quoted above. The last sentence of paragraph 3, rightly uses the word "**also**" (emphasis supplied), for the MACP Scheme additionally stipulates grant of financial upgradation whenever a person has spent 10 years of continuous service in the same grade pay. Thus, the use of the word "also" is significant for it means that the Government employee would be entitled to grant of financial upgradations if he/she has spent 10 years of continuous service in the same grade pay.

11. The error or misunderstanding in the DoP&T clarification relied by the petitioners is apparent in the latter portion of paragraph 4 for firstly, it does not notice the correct facts and secondly it is contradictory and has reached an erroneous and wrong conclusion....."

5. The applicants entered into service during 1985, 1986 and 1987 and they got their first regular promotion in the year 1991. They were granted second financial upgradation in the year 2001. Initially ACP Scheme was made applicable on 1.8.1999 to all Govt. Servants who are stagnating because of lack of promotional avenue. So under the ACP Scheme two financial upgradations were envisaged on completion of 12 years of service and second upgradation on completion of 24 years of

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service. Later on MACP Scheme was introduced on 1.9.2008 which has modification to ACP Scheme apart from other change the financial upgradation are now envisaged on completion of 10, 20 and 30 years. The MACP was made applicable on 1.9.2008 onwards. Prior to it ACP Scheme was applicable. The Hon'ble High Court has ruled in favour of the petitioner on the basis of the illustration 28 (A)(i) (ii) and held that on completion of 20 years service from first promotion, financial upgradation be given to the employee which has gone unnoticed post MACP Scheme. The stipulations relating to 10, 20, 30 years and 10 years in grade pay operates independently and in alternatively whenever any of two alternative conditions are satisfied, the benefit under MACP Scheme should be available. Condition and stipulation of one cannot be read into another. The ratio lays down in the the above judgment of Hon'ble High Court clearly stipulates that the 30 years complete service is not mandatory. On completion of ten years service from the last upgradation is sufficient for grant of the 3<sup>rd</sup> financial upgradation provided that more than 20 year has been completed from the last promotion. In the present application, the applicants were promoted in the year 1991. So that 20 years have been completed.

6. Thus we have no hesitation to hold that the applicants are entitled for 3<sup>rd</sup> financial upgradation in the MACP Scheme as given to them as per Annexure A-2 and Annexure A-4 ie. 27.2.2011 to Applicant Nos.1 and 2 and 30.9.2011 to Applicant No.3.

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7. The present O.A stands allowed and respondents are directed to grant the benefit of 3<sup>rd</sup> MACP within a period of 90 days from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated this the 19<sup>th</sup> day of June 2019)

**ASHISH KALIA**  
**JUDICIAL MEMBER**

**E.K.BHARAT BHUSHAN**  
**ADMINISTRATIVE MEMBER**

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**List of Annexures in O.A.No.180/00295/2015**

1. Annexure A1 - True copy of the Office Memorandum No.35034/3/2008-Estt.(D) dated 19.5.2009.
  2. Annexure A2 - True copy of the communication dated 16.10.2012.
  3. Annexure A3 - True copy of the communication dated 3.9.2012.
  4. Annexure A4 - True copy of the communication dated 24.6.2013.
  5. Annexure A5 - True copy of the letter dated 28.11.2013.
  6. Annexure A6 – True copy of the letter dated 19.2.2014.
  7. Annexure A7 – True copy of the representation dated 24.3.2014.
  8. Annexure A8 – True copy of the communication dated 30.4.2013.
  9. Annexure A9 – True copy of the pay fixation pro forma dated 19.6.2014.
  10. Annexure A10 – True copy of the communication dated 2.7.2014.
  11. Annexure A11 – True copy of the pay fixation pro forma dated 7.3.2013.
  12. Annexure R1 – True copy of the PCDA (Mumbai) letter dated 30.6.2015.
  13. Annexure R2 – True copy of the IHQ of MoD(N) letter CP(NG)/2853/MACP/Clarification dated 3.7.2015.
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