
(2018) 12 CAT CK 0178

In the Central Administrative Tribunal

Case No : Original Application No. 4276 Of 2013

Hari Prem Malik And Ors

APPELLANT

Vs

Union Of India Through And Ors

RESPONDENT

Date of Decision : 04-12-2018

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2018) 12 CAT CK 0178

Hon'ble Judges : L. Narasimha Reddy, J;Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : Padma Kumar S., Rajinder Nischal, A.K. Singh

Final Decision : Allowed

Judgement

Pradeep Kumar, Member (A)

1. Heard Sh. Padma Kumar S., learned counsel for applicants and Sh. Rajinder Nischal and Sh. A.K.Singh, learned counsel for respondents.

2. The applicants are working as Civilian Staff Officer (Deputy Director) in Army Headquarters under the Cadre Controlling Authority, namely, Joint Secretary (Training) and Chief Administrative Officer (JS (Trg) & CAO), Ministry of Defence. They were promoted to this post in the year 1996 and 1997. As per 5th Central Pay Commission (CPC), this post was having a scale of Rs.10000-15200, which got replaced by "PB-3 + GP Rs.6600" w.e.f. 01.01.2006 when 6th CPC came into being.

Vide DOP&T letter dated 24.06.2005 instructions were issued that on completion of four years in the scale Rs.6500-10500, the Section Officers/Private Secretaries (SOs/PSs) were to be granted the non-functional scale (NFS) of Rs.8000-13500 (Group-B). This NFS was to take effect from 03.10.2003.

When 6th CPC recommendations were approved, the initial scale of SO/PS was upgraded to 7500-12000 with the stipulation that the pay fixation in 6th CPC for

SO/PS shall be done in the new scale corresponding to Rs.7500-12000 and those who had completed four years of service will be granted the corresponding scale of Rs.8000-13500 (Group-A) as non-functional scale. The equivalent grades for Rs.7500-12000 was PB-2 with grade pay of Rs.4800 while for Rs.8000-13500 it was PB-3 with Grade Pay of Rs.5400.

3. Prior to 6th CPC recommendations, which were applicable w.e.f. 01.01.2006, the Government also had a scheme known as Assured Career Progression Scheme (ACP Scheme introduced on 09.08.1999). However, a new Scheme known as Modified Assured Career Progression Scheme (MACP Scheme) came into being w.e.f. 01.09.2008 vide notification dated 19.05.2009. The salient features of these two schemes ACP and MACP as notified are as under:

"ACP Scheme

3.1 While in respect of these categories also promotion shall continue to be duly earned, it is proposed to adopt the ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Keeping in view all relevant factors, it has, therefore, been decided to grant two financial upgradations [as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 (in relation to Group "C" and "D" employees) entered into with the Staff Side of the National Council (JCM)] under the ACP Scheme to Group "B", "C" and "D" employees on completion of 12 years and 24 years (subject to condition no.4 in Annexure-I) of regular service respectively. Isolated posts in Group "A", "B", "C" and "D" categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees (including those with temporary status), ad-hoc and contract employees shall not qualify for benefits under the aforesaid Scheme. Grant of financial upgradations under the ACP Scheme shall, however, be subject to the conditions mentioned in Annexure-II (attached).

The relevant para of Annexure-II mentioned above are reproduced below:

1. The ACP Scheme envisages merely placement in the higher pay-scale/grant of financial benefits (through financial upgradation) only to the Government servant concerned on personal basis and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose;
2. The highest pay-scale upto which the financial upgradation under the Scheme shall be available will be Rs.14,300-18,300. Beyond this level, there shall be no financial upgradation and higher posts shall be filled strictly on vacancy based promotions;

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4. The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfillment of

prescribed conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc this would have consequential effect on the second upgradation which would also get deferred accordingly;

5.1 Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in-situ promotion and fast-track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him;

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9. On upgradation under the ACP Scheme, pay of an employee shall be fixed under the provisions of FR 22(I) a(1) subject to a minimum financial benefit of Rs.100/- as per the Department of Personnel and Training Office Memorandum No.1/6/97-Pay.I dated July 5, 1999. The financial benefit allowed under the ACP Scheme shall be final and no pay-fixation benefit shall accrue at the time of regular promotion i.e. posting against a functional post in the higher grade;

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15. Subject to Condition No. 4 above, in cases where the employees have already completed 24 years of regular service, with or without a promotion, the second financial upgradation under the scheme shall be granted directly."

MACP Scheme

The Sixth Central Pay Commission in Para 6.1.15 of its report, has recommended Modified Assured Career Progression Scheme (MACPS). As per the recommendations, financial upgradation will be available in the next higher grade pay whenever an employee has completed 12 years continuous service in the same grade. However, not more than two financial upgradations shall be given in the entire career, as was provided in the previous Scheme. The Scheme will also be available to all posts belonging to Group "A" whether isolated or not. However, organised Group "A" services will not be covered under the Scheme.

The terms and conditions for MACP were contained in Annexure therein and relevant paras are reproduced below:

1. 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.

Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade-pay.

2. The MACPS envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section 1 , Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. Thus, the grade pay at the time of financial upgradation under the MACPS can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion. In such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/organisation will be given only at the time of regular promotion.

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4. Benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial upgradation under the Scheme. Therefore, the pay shall be raised by 3% of the total pay in the pay band and the grade pay drawn before such upgradation. There shall, however, be no further fixation of pay at the time of regular promotion if it is in the same grade pay as granted under MACPS. However, at the time of actual promotion if it happens to be in a post carrying higher grade pay than what is available under MACPS, no pay fixation would be available and only difference of grade pay would be made available. "

4. It was also specified in this notification for MACPS that any interpretation or clarification shall be given by the DoP&T. The relevant para is reproduced:

" 9. Any interpretation/clarification of doubt as to the scope and meaning of the provisions of the MACP Scheme shall be given by the Department of Personnel and Training (Establishment-D). The scheme would be operational w.e.f. 01.09.2008. In other words, financial upgradations as per the provisions of the earlier ACP Scheme (of August, 1999) would be granted till 31.08.2008."

Therefore, any clarification as and when issued in future, are necessarily the inherent part of this MACP scheme. One such clarification in respect of DR Assistants/DR Grade C Stenographers, who have got non-functional grade in grade pay of Rs.5400/-, was issued on 12.01.2010 and slightly modified on 12.04.2010 (Please see para 9 below).

5. Further certain illustrations were also given in para 28 of Annexure therein on how to implement the MACPS. The relevant paras are reproduced below:

"28. (B) If a Government servant (LDC) in PB-I in the Grade Pay of Rs.1900 is granted 1st financial upgradation under the MACPS on completion of 10 years of service in the PB-I in the Grade Pay of Rs.2000 and 5 years later he gets 1st regular promotion (UDC) in PB-I in the Grade Pay of Rs.2400, the 2nd financial upgradation under MACPS (in the next Grade Pay w.r.t. Grade Pay held by Government servant) will be granted on completion of 20 years of service in PB-I

in the Grade Pay of Rs.2800. On completion of 30 years of service, he will get 3rd ACP in the Grade Pay of Rs. 4200. However, if two promotions are earned before completion of 20 years, only 3rd financial upgradation would be admissible on completion of 10 years of service in Grade Pay from the date 2nd promotion or at 30th year of service, whichever is earlier.

(C) If a Government servant has been granted either two regular promotions or 2nd financial upgradation under the ACP Scheme of August, 1999 after completion of 24 years of regular service then only 3rd financial upgradation would be admissible to him under the MACPS on completion of 30 years of service provided that he has not earned third promotion in the hierarchy."

6. The applicants pleaded that they were entitled for 3rd MACP benefit on completion of 30 years of service, which fell in the year 2009 and 2010 in their cases and on being granted this benefit their salary was fixed in PB-3 + GP 7600 w.e.f. these dates vide orders dated 31.12.2009. Subsequently, without issuing them any show cause notice etc. the orders were passed vide letter dated 04.11.2013, and this third MACP benefit was withdrawn and it was also advised that their 3rd and final MACP shall be in PB-3 + GP Rs.6600 only. This was primarily on the basis of DOP&T letter dated 12.04.2010, which was relied upon by DoP&T while clarifying the issue on 15.04.2013.

It is mentioned here that DoP&T has issued certain clarifications for SOs/PSs who were granted non-functional scale of Rs.8000-13500 on completion of 4 years of service in the scale of Rs.6500-10500, vide their letter dated 12.04.2010 in respect of their 3rd and final MACP being limited to "PB-3 + GP rs.6600" only (Para 9 below). However, applicants pleaded that they were never given this NFU of Rs.8000-13500 and had in fact been promoted to Deputy Director without ever availing this NFU. However, in their case also, the instructions dated 12.04.2010 was made applicable vide this clarification dated 15.04.2013.

7. The applicants pleaded that since this withdrawal of 3rd MACP was not in order, hence, the grievance has been raised in the instant OA. The applicant pleaded that in respect of PS even though two scales are shown as (i) Rs.7500-12000 and (ii) Rs.8000-13500 on completion of four years, the two scales are inherently one only and grant of scale of Rs.8000-13500 on completion of four years of working cannot be considered as a MACP benefit, this being an inherent scale of PS. Moreover, they were not even granted this scale. The applicant sought following reliefs:

"(a) Quash and set aside impugned orders dated 04.11.2013 and 12.04.2010, qua the applicants

(b) Declare that the applicants are entitled to the 3rd MACP of Rs.7600/- without taking into account the non-functional scale of Rs.8000-13500 as a separate MACP or promotion.

(c) Direct the respondents to restore the Grade pay of Rs.7600 already granted

to the applicants to its original state with consequential benefits.

(d) Any other relief as may be deemed fit under the facts and circumstances of the case."

Interim relief against recovery was granted on 10.12.2013.

8. The applicants relied upon a catena of judgments as under:

(i) F.C.Jain vs. Union of India, which was adjudicated by the Principal Bench of this Tribunal in OA No.818/2000 decided on 27.09.2000. Thereafter the judgment was agitated in Hon"ble High Court of Delhi vide WP No.4664/2001 which was decided on 18.04.2002 and judgment by CAT was upheld. Thereafter, the matter was agitated before Hon"ble Supreme Court in Special Leave Appeal (C) No.289/2003 decided on 19.09.2003 wherein the SLA was dismissed. Thus, the decision by CAT had attained finality.

(ii) All India Association of Statistical Investigators vs. Union of India, OA No.713/2012 decided on 06.09.2013 by Principal Bench of this Tribunal.

(iii) V.K.Sharma and others vs. Union of India and others, OA No.1622/2014 decided on 18.09.2015 by Principal Bench of this Tribunal. This decision was agitated before Hon"ble High Court of Delhi vide WP (C) No.109/2016 which was decided on 25.04.2017 and the decision by the Tribunal was upheld.

(iv) G.S.Bhatti and others vs. Union of India, OA No.3290/2012 decided on 10.10.2018 by Principal Bench of this Tribunal.

(v) Mrs. Shaira A.Khan vs. Union of India & ors., OA No.804/2013 decided by this Tribunal on 17.11.2014.

The ratio of these judgments, as regards their applicability or otherwise to instant case, have been discussed in para 16 below.

9. The respondents pleaded that earlier the ACP Scheme was in force as notified on 09.08.1999 and a new MACP Scheme was notified on 19.05.2009 which was to take effect from 01.09.2008. This notification also provided that any interpretation or clarification shall be given by DOP&T only. The DOP&T had already clarified the matter vide their letter dated 12.01.2010 which was modified vide letter dated 12.04.2010 as under:

"In supersession of this Department"s O.M. of even number dated 12th January, 2010, the undersigned is directed to say that it has been further clarified by Establishment (D) Section of this Department that DR Assistants/DR Grade ?C" Stenographers who have got Non-functional grade (NFG) in the grade pay of Rs.5400/- would only be entitled for 3rd financial upgradation in the immediate higher grade pay of Rs.6600/- on completion of 30 years of continuous service or on completion of 10 years stagnation in a single grade pay, whichever is earlier. No further financial upgradation would be admissible to such officials."

The proviso "or on completion of 10 years stagnation in a single grade pay,

whichever is earlier", was, added on 12.04.2010 to the remaining part of this instruction which was already contained in earlier instruction dated 12.01.2010.

This clarification is very important and has to be read as inherent part of MACP Scheme.

10. The respondents had approached DOP&T to confirm whether the Section Officers and PSs who had joined the Govt. Service as Direct Recruit Assistants and Personal Assistants respectively and had been granted NFS from a date prior to 01.01.2006 were entitled to get 2nd and 3rd FUs in the Pay Band of Rs.15,600-39,100 with Grade Pay of Rs.6,600 in PB-3 and Rs.15,600-39,100 with Grade Pay of Rs.7,600 in PB-3 respectively on completing 20 and 30 years of Service by ignoring grant of NFS in the Grade Pay of Rs.5,400.

The DOP&T vide Diary No.32556/CR/2011 dated 26.04.2011 informed that such SOs/PSs who had got benefits under NFS in the Pay-Scale of Rs.8000-13,500 (Revised Scale of GP of Rs.5400 in PB-3) would only be entitled for grant of 3rd FU in the immediate higher Grade Pay i.e., GP of Rs.6600 on completion of 30 years" continuous regular service or completion of 10 years from the date of grant of NFS, whichever is earlier. Hence, NFS is not to be ignored for the purpose of grant of 3rd FU under MACPS. This implies that SOs who joined as DR Assistants and got NFS in the Grade Pay of Rs.5400 are entitled to 3rd FU in the Grade Pay of Rs.6600 only.

The DOP&T further informed vide Diary No.41851/CR/2001 dated 29.06.2011 that the views/comments of the Dept. of Expenditure (DOE) had been sought as to whether the SOs/PSs who were not granted the benefit of Pay Fixation on grant of NFS of Rs.8000-13,500 (pre-revised) under FR 22 (1) (a) (i) prior to 01.01.2006 may be granted 3rd FU under MACPS to the Grade Pay of Rs.7600 in PB-3.

The DOP&T on 15.04.2013 informed that DOE has not agreed to the said proposal for grant of 3rd FU under MACPS in the Grade Pay of Rs.7600 to SOs/PSs who were not granted Pay Fixation benefits on grant of NFS in the pay scale of Rs.8000-13,500 (Revised Scale of Grade Pay of Rs.5400 in PB-3). This again implies that Deputy Directors who joined the service as DR Assistants and got NFS in Grade Pay of Rs.5400 are not eligible for 3rd FU in the Grade Pay of Rs.7600.

Accordingly, the 3rd MACP in Grade Pay Rs.7600, which was already granted w.e.f. 2009 and 2010 vide orders dated 31.12.2009 was taken to be wrong and was withdrawn vide orders dated 04.11.2013. This withdrawal was accordingly done for all similar staff including the applicants.

11. Respondents have also drawn attention to a judgment of Hon"ble Apex Court in Secretary, Department of Personnel, Public Grievances & Pension & Anr. vs. T.V.L.N.Mallikarjuna Rao with batch cases, C.A. No.10862, 10863, 10865, 10866, 108667 all of 2014, which were decided by a common order on 09.12.2014,

wherein following observations were made:

" 26. The classification of posts and determination of pay structure comes within the exclusive domain of the Executive and the Tribunal cannot sit in appeal over the wisdom of the Executive in prescribing certain pay structure and grade in a particular service. There may be more grades than one in a particular service.

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Difference in pay scales based on educational qualification, nature of job, responsibility, accountability, qualification, experience and manner of recruitment does not violate Article 14 of the Constitution of India.

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Both the Tribunal and the High Court also erred in ignoring the law laid down by this Court in plethora of judgments that the "principle of equal pay for equal work" is not always applicable even if duties and functions are of similar nature.

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32. In view of the findings recorded above we hold that Data Entry Operators Grade-A are not entitled for Scale of pay of Rs.1350-2200 w.e.f. 1.1.1986 or thereafter merely on the basis of their qualifications or for the fact that they have completed their period of requisite service. We further hold that any decision rendered by any Tribunal or any High Court contrary to our decision is wrong. Further in view of the reasons and findings recorded above while we hold that the respondents are not entitled to the benefit as they sought for before the Tribunal or the High Court, all the impugned orders passed by the CAT Benches and the High Courts in favour of the respondents being illegal are set aside."

It was thus pleaded that payment of salary scales and terms and conditions of any scheme like ACP/MACP lies in the exclusive domain of executives and the same have been correctly implemented in the case and that also without any discrimination.

12. Accordingly, it was pleaded that OA is required to be dismissed.

13. Matter was heard at length.

14. The SOs/PSs were having a scale of Rs.6500-10500 and on completion of four years they were to be granted the higher scale of Rs.8000-13500 on non-functional basis w.e.f. 03.10.2003, i.e. from a date when ACP was in force and MACP was not even born. This was essentially an accelerated financial upgradation, which was to be granted on completion of four years of service in the scale of Rs.6500-10,500. It was thus a financial upgradation which came into effect before a new MACP Scheme came into force w.e.f. 01.09.2008 (as notified on 19.05.2009). Its effect has to be seen as per the terms and conditions of the two schemes ACP and MACP at relevant point of time.

The plea of the applicant, that the two scales of Rs.7500-12000 (initial scale) and Rs.8000-13500 (after 4 years of service) are inherently one, can obviously not be accepted. The higher scale of Rs.8000-13500 after four years, is in itself an accelerated financial upgradation which has to be necessarily counted as one as per terms and conditions of MACP.

15. It is felt necessary to scrutinise the rationale behind ACP Scheme or its later version known as MACP Scheme. A close reading of the ACP directives dated 09.08.1999 and that of MACP Scheme, notified on 19.05.2009 (para 3 supra), clearly establishes, that both these Schemes were contemplated to address the situation of a Govt. employee stagnating in the same scale for long. In ACP, provision was made that an employee who is not promoted to next level of his/her departmental promotional hierarchy for a period of 12 years, is entitled for 1st ACP and if he/she is not promoted to the subsequent next level by the time he/she completes 24 years of service, 2nd ACP benefit will also be extended. Both these ACP benefits were in the form of financial upgradation by granting the next higher scale applicable in the departmental promotional hierarchy.

In MACP, the Scheme was made more beneficial to the employees; in that instead of two, a total of three upgradations were envisaged at 10/20/30 years of service though with an important difference. In MACP Scheme, financial upgradations were to be given to the next scale in "hierarchy of scales of 6th CPC" as against "departmental promotional hierarchy of scales in ACP Scheme". Certain illustrations to explain the same were also given in para 28 of this MACP Scheme notification dated 19.05.2009 (para 5 supra).

Further, the aspect of how to regulate the 3rd MACP in respect of Direct Recruit Assistant/Direct Recruit Grade-C Stenographers, who are in "PB-3 + GP Rs.5400" was specifically clarified by DOP&T vide their instructions dated 12.01.2010 and 12.04.2010 as part of MACP Scheme and was subsequently reiterated also vide their note dated 26.04.2011 in respect of specific confirmation sought by respondents. It is thus an inherent part of original MACP Scheme (para 4 & 9 supra and 17 below).

16. The judgments relied upon by applicant (para 8 supra) have also been scrutinised. Our comments are as under:

16.1 In F.C.Jain (supra) case, the applicant had joined as Jr. Engineer on 10.10.1962 and was promoted as Assistant Engineer on 18.09.1987 in the grade of Rs.6500-10500. He retired on 31.07.2000. On introduction of ACP Scheme on 09.08.1999 he became eligible for ACP benefits. First ACP was due in 1974 (after 12 years of joining) and 2nd ACP was due in 1986 (after 24 years of joining). Since ACP was not in force at that time, and he got only one promotion after ACP came into force on 09.08.1999, he was granted the second ACP on 09.08.1999 itself, a date when ACP was introduced. Meanwhile, through orders dated 13.05.1998, half the posts of Assistant Engineer were to be operated in the higher scale of Rs.7500-12000, i.e. without any promotion and the designation

remaining same. This was, therefore, a non-functional upgradation and for grant of this scale, number of years spent in lower scale was also not relevant. The higher scale was to be given to half of the senior Assistant Engineers. This benefit of non-functional upgradation was denied by the respondents on the plea that he has been granted benefit of ACP, although he ranked amongst the senior 50% of AENs at the relevant point of time, i.e. on 13.05.1998, which was before ACP came into being. This denial of non-functional upgradation was challenged by Sh. F.C.Jain. It was decided that this benefit is admissible.

The ratio of this judgment pertains to grant of non functional scale which cannot be counted towards ACP as per terms and conditions of ACP scheme (which itself came later to this NFS and where NFS were not countable) and therefore, this is not applicable in the instant case, which is for MACP.

16.2 In the case of All India Association of Statistical Investigators (*supra*), the applicants had pleaded that higher scales were to be granted in the "departmental promotional hierarchial scales" in ACP scheme. This is very different from the "hierarchy of scales" which is applicable in MACP. This case related to the post of Statistical Investigators in Subordinate Statistical Service. This judgment relied upon the judgment of F.C.Jain (*supra*) case and ruled that ACP benefit has to be given in the "departmental promotional hierarchy of scales". The ratio of this judgment is not applicable in the instant case, which is for MACP.

16.3 In the case of V.K.Sharma (*supra*), the applicants were holding the post of Personal Assistants (PAs) and had retired as Private Secretaries (PSs) from R&AW (which comes under Cabinet Secretariat), and were granted 2nd ACP and as a result were working in the scale of Rs.10,000-15,200 as per 5th CPC. On implementation of 6th CPC, it was converted to PB-3 + Grade Pay Rs.6600. Further, the non-functional scale of Rs.8000-13500 (which is equivalent to PB-3 + Grade Pay Rs.5400 in 6th CPC for SO/PS) was newly introduced for CSS/CSSS and it was extended to R&AW also. They were granted the 3rd MACP benefit of PB-3 + GP Rs.7600, which was subsequently withdrawn.

It was pleaded by respondents that the NFS scale of Rs.8000-13500 as was applicable to SO/PS of CSS/CSSS, was extended to the SO/PS of R&AW. Accordingly, the hierarchial pattern of Assistants/SO/PS of R&AW became at par with that of Assistant/SO/PS of CSS/CSSS cadres. This being so, grant of MACP to officials of R&AW could not be different from that of CSS/CSSS (where 3rd MACP ended at PB-3 + GP Rs.6600). Ignoring this terminal non-functional scale, and grant of a different financial upgradation as 3rd MACP only for R&AW officials, would be against the concept of parity. For CSS/CSSS, the 3rd MACP was in the scale of PB-3 + GP Rs.6600/-" only (para 9 *supra*).

However, it was held that the third financial upgradation under MACP, when it became due, should be in a scale higher than the one where applicants were already working at relevant point of time which was PB-3 with Grade Pay

Rs.6600. As such, grant of PB-3 with Grade Pay Rs.7600 as 3rd MACP was upheld. This decision was upheld by Hon"ble High Court also.

(a) As already brought out, MACP envisages non-functional upgradations when an employee could not be promoted. Therefore, the ratio of this case becomes applicable in the instant case as the non-functional scale of Rs.8000-13,500 was firstly not available at relevant point of time, i.e. 4 years after promotion of applicants to the scale of Rs.2000-3500 (which took place in the year 2004 and this scale was later changed to Rs.6500-10,500 in 5th CPC w.e.f. 01.01.1996) i.e. in the year 1988. Secondly, even if this scale would have been available and availed by applicants, they all were promoted to a higher level as Deputy Director in the scale of Rs.10,000-15,200 in the year 1996 and 1997 (which was later changed to PB-3 + GP Rs.6600 in 6th CPC w.e.f. 01.01.2006) and hence would have been subsumed and thus instant applicants would have become eligible for any other benefits that came their way subsequent to the year 1996 and 1997.

In the instant case, this subsequent benefit came their way by way of ACP w.e.f. 09.08.1999 and MACP w.e.f. 01.09.2008.

16.4 In G.S.Bhatti (supra) case, the benefits of the judgment by Tribunal in V.K.Sharma (supra) case discussed in para 16.3 above was extended. For reasons already brought out, the same becomes applicable in the instant case.

16.5 In the case of Mrs. Shaira A.Khan (supra), the applicant had joined as Stenographer Grade-C on 16.04.1980 at the time of her initial appointment. She was promoted as PS in the grade of Rs.2000-3500 on 01.07.1983. With this promotion, requirement of 1st ACP got fulfilled. This grade became Rs.6500-10,500 when 5th CPC was implemented w.e.f. 01.01.1996. Thereafter, she was granted the Non Functional Upgradation to the scale of Rs.8000-13500 w.e.f. 01.07.1997. Thereafter 2nd ACP was granted on completion of 24 years of service on 01.07.2004 and she was granted the scale of Rs.10,000-15,200. Subsequently, she was granted substantive promotion as PPS in the scale of Rs.10,000-15,200 on 04.05.2011. The 3rd MACP on completion of 30 years of service in 2010, was denied to Mrs. Shaira A.Khan on the plea that the grant of NFU in the scale of Rs.8000-13,500 w.e.f. 01.07.1997, will also count as one of the ACP benefit. This was challenged in this case.

In this case the applicant got 2nd ACP on 01.07.2004. It was only thereafter that the new MACP Scheme had come into being w.e.f. 01.09.2008. Therefore, all the benefits received by her prior to 2nd ACP shall naturally be subsumed in the 2nd ACP itself. Hence, it was held that the 3rd MACP will become due when the applicant completes 30 years of total service, if she is not promoted by that time. Accordingly, the OA was allowed by the Tribunal.

The ratio of this judgment, therefore, becomes applicable in the instant case.

17. It is noted that in the context of MACP Scheme, DOP&T vide their note dated

26.04.2011, have clarified as under:

"As per the provisions of MACPS, every functional upgradation under the Scheme is being treated as one upgradation. Accordingly, the benefits given under NFS on completion of 4 years of regular service in the grades of SOs and PSs w.e.f. 01.01.1996 (notional basis) and actual basis w.e.f. 03.10.2003 is being treated as one financial upgradation in terms of para 8.1 of Annexure-I of MACPS."

18. In the instant case, the applicants were initially appointed to Govt. service in 1980 and 1979 as Assistants in scale Rs.1640-2900. They were promoted as Assistant Civilian Staff Officer (Redesignated as Section Officer (SO) in scale Rs.2000-3500 in the year 1984 and 1985, i.e. after about 4 to 6 years of service. With this promotion, the requirement of granting of 1st ACP, which would have become due on completion of 12 years of service if not promoted earlier, became non-applicable. This scale was changed to Rs.6500-10500 w.e.f. 01.01.1996 with 5th CPC. Thereafter, they were promoted to the post of Civilian Staff Officer (Deputy Director), in the scale of Rs.10000-15200, in the year 1996 and 1997, i.e., after 12 to 13 years of previous promotion and after total 16 to 18 years of service. With this 2nd promotion, the requirement of granting 2nd ACP, which would have become due on completion of 24 years of service after initial appointment, if not promoted earlier, also became non-applicable. This scale was changed to PB-3 + GP Rs.6600 w.e.f. 01.01.2006 with 6th CPC.

However, at that stage, the new MACP scheme came into being on 01.09.2008 vide notification dated 19.05.2009, which envisaged three financial upgradations at 10/20/30 years of service. As already explained hereinabove, the applicant already got two promotions (2nd promotion being as Deputy Director in the scale Rs.10000-15200) within 20 years of service, so the requirement for 2nd MACP was already fulfilled. Therefore, he is to be considered only for 3rd MACP now, when it falls due on completion of required 30 years of service, if he is not promoted by this time.

The applicants were granted the second promotion in the year 1996 and 1997, by when they had completed 16 to 18 years of service. Thereafter, MACP Scheme came into force, which envisages a total of three financial upgradations in the hierarchy of scales if one is not promoted within subsequent 10/20/30 years. Thus, the 3rd MACP was due after 10 years of last promotion, subject to a maximum of 30 years of total service. The applicants were last promoted in 1996 and 1997 and thus the 3rd MACP becomes due either 10 years later or 30 years of total service. Thus, the benefit of 3rd MACP can be considered only after the Scheme came into force. Therefore, the applicants are now entitled for financial upgradation in hierarchy of scales to PB-3 + GP Rs.7600. In the instant case, it was granted to all of them vide orders dated 31.12.2009 and was to take effect from various dates in 2010 and 2009.

As brought out herein above, 3rd MACP was due and was given. Its subsequent withdrawal vide order dated 04.11.2013 was not correct. It is required to be

restored. The premise that non-functional scale of PB-3 + GP Rs.5400 is to be counted as one MACP, does not hold true in instant case for reasons explained in para 16.3 (a) above.

19. Thus, the plea of applicant gains acceptability. This Tribunal however notes that in view of DOP&T OM dated 12.04.2010, this may lead to certain disparity in the terminal grade amongst DR Assistants. Therefore, as per MACP scheme this will be treated as personal to these Assistants.

20. In the result, the OA is allowed. The impugned order, in so far as it relates the applicants, is quashed. There shall be no order as to costs.