
(2018) 11 CAT CK 0042

In the Central Administrative Tribunal

Case No : Original Application No. 3084 Of 2013

Rajesh Kumar Gupta And Ors

APPELLANT

Vs

Union Of India Through And Ors

RESPONDENT

Date of Decision : 29-11-2018

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2018) 11 CAT CK 0042

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 : Dismissed

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 Private Secretary (PS) 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 the post of PS in the year 2001. As per 5th Central Pay Commission (CPC), this post was having a scale of Rs.6500-10500 and vide DOP&T letter dated 24.06.2005 instructions were issued that on completion of four years in this scale, the 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 PS was upgraded to 7500-12000 with the stipulation that the pay fixation in 6th CPC for 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 instead of Group-B) 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. All four applicants were granted this scale w.e.f. 01.07.2005. On implementation of 6th CPC, all four applicants were granted the scale of "PB-3 + GP Rs.5400", w.e.f. 01.01.2006.

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 No.1, 2 & 3 pleaded that they were entitled for 2 nd MACP benefit of "PB-3 + GP Rs.6600" w.e.f 01.07.2011 and since it was not granted, they made representations in the year 2013. These representations were rejected vide orders dated 08.07.2013. This is the impugned order challenged in this OA.

In respect of applicant No.4, it is the 3rd MACP which has been claimed w.e.f. 01.07.2011. She has also represented for the same vide his letter dated 30.04.2013 but to no avail.

7. The applicants 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. The applicants sought following reliefs:

"(a) Quash and set aside impugned order dated 08/12.07.2013, (Annexure A-1 colly) also declare the clarifications issued by DoP&T OM dated 12.4.2010 (Annexure A-1 colly) as ultra vires the MACP Scheme itself.

(b) Declare that the applicants are entitled to 2nd/3rd MACP in the Grade Pay of Rs. 6600/- counting their approved service rendered by them from the date of commencement of the Approved Service in the post of PS and not from the date of grant of non-functional Grade Pay of Rs. 5400/-.

(c) Direct the respondents to grant the Grade Pay of Rs. 6600 to the Applicant from the date of commencement of their approved service completed 10 years in the post of Private Secretary.

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

8. The applicant has 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) All India CGHS Employees Association vs. Union of India in OA No.3441/2012 decided on 31.01.2014 by the Tribunal.

(vi) Hari Ram and another vs. Registrar General, Delhi High Court in WP (C) No.9357/2016 decided on 20.12.2017 by the Hon"ble High Court of Delhi.

(vii) 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 sought clarification from DOP&T vide their letter dated

26.10.2009, whether grant of NFS to officers prior to 01.09.2008 (which was the applicable date for MACP), would be counted for the purpose of granting Financial Upgradation under ACP scheme. ACP envisaged promotion in a time frame of 12/24 years and if not granted, financial upgradation in promotional hierarchy was to be given. Accordingly, it was clarified on 13.11.2009 that NFS was not to be counted towards ACP. The DOP&T notifications dated 12.01.2010 and 12.04.2010 regarding the 3rd and final MACP in Grade Pay Rs. 6600 is also very relevant. Confirmation to this effect was again advised by DOP&T vide their note dated 26.04.2011 (para 9 above and 17 below).

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.

27. xxx xxx xxx

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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29. xxx xxx

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).

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, is not applicable in the instant case.

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.

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.

As already brought out, MACP envisages non-functional upgradations when an employee could not be promoted. Therefore, the ratio of this case is also not applicable in the instant case as the non-functional scale of Rs. 8000-13,500 was already available and was availed by the instant applicants whereas this scale was not even available to Shri V.K.Sharma at relevant point of time when they were given the 2nd ACP of PB-3 + GP Rs. 6600. In any case, the NFS of "PB-3 + GP Rs. 5400" which was granted to R&AW subsequently, would have got subsumed in 2nd ACP in respect of Shri V.K.Sharma before MACP came into being and it was only thereafter that he became eligible for 3rd MACP.

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 is not applicable in the instant case.

16.5 In All India CGHS Employees Association (supra), the applicants were holding the post of Pharmacist in various scales. They were initially appointed to Rs. 4500-7000 in 5th CPC with designation Pharmacist (Entry grade). Thereafter, there were two scales of Rs. 5000-8000 (Pharmacist Grade-II and Rs. 5500-9000 (Pharmacist Grade-I). On account of their higher qualification at entry level, vis-a-vis others who were also having this entry scale, there were demands even prior to 6th CPC for granting them higher scales. Due to certain existing parities with other para-medical staff, it was not found feasible. A fast track Committee was appointed to look into certain demands of various common category posts including that of Pharmacists. This Committee made certain recommendations, which were implemented along with 6th CPC w.e.f. 01.01.2006. For Pharmacists, the two designations Pharmacist II and Pharmacist I were merged and they were redesignated as Pharmacists (Non-functional grade) and it was to be granted after 2 years of service in entry grade. The new pay structure was to take effect from 01.01.2006, i.e., the date 6th CPC came into being. The relevant pre-revised and revised scales were as under (Ministry of Finance Notification dated 18.11.2009):

Stage 5th CPC 6th CPC

1 Rs. 4500-7000 Pharmacist PB-1 - Rs. 5200-20200 + GP (Entry grade) Rs. 2800

2 Rs. 5000-8000 (Pharmacist These two grades were merged as Grade-II) PB-2 - Rs. 9300-34800 + GP

3 Rs. 5500-9000 Rs. 4200 and the designation was (Pharmacist Grade-I) changed as Pharmacist (Non- functional Grade). This was to be granted after two years of service in entry grade.

Accordingly, vide letter dated 16.07.2010, they were granted three MACP benefits to the Grade Pay Rs. 4600, 4800 and Rs. 5400 and orders were also issued as applicable in individual cases. Vide letter dated 11.11.2011 this was withdrawn as grant of PB-2 + Rs. 4200 on completion of two years service, was also counted as first MACP. Accordingly, 2nd and 3rd MACP were also advised to be in GP Rs. 4600 and GP Rs. 4800. The applicants challenged this withdrawal of MACP benefit. This petition was allowed by the Tribunal. Relevant paras of this judgment by the Tribunal are reproduced below:

"18. The Government of India in the Ministry of Finance had issued a clarification on 6th CPC replacement pay to the pre-revised scale of pay of Rs.8000-275-13,500 granted on account of financial upgradation under the ACP Scheme vide its letter dated 20.05.2011 (Annexure-A/34) of the written submission. It was clarified in para 4 as follows:-

"4. Further, the benefits of ACPS of August 1999 had been allowed till 31.8.2008 and only functional promotion(s) is/are counted for the purpose of Scheme. Besides, there is no provision for counting "Non-functional scale" for the purpose of ACP Scheme."

19. The above clarification categorically provides that non-functional scale cannot be counted for the purpose of the ACP Scheme. The above clarification of the Ministry of Finance, therefore, has to be read with para 3 of the OM dated 18.11.2009 wherein it was clarified that Pharmacists (Entry Grade) on promotion to the next higher grade of Pharmacist (Non-Functional Grade) having grade pay of Rs.4200/- will be delinked from vacancies and will become non-functional and time bound.

20. The Ernakulam Bench of the Tribunal in OA No.268/2007 has held that when posts are placed in higher scale without a change in responsibilities and duties, then such placement should not be treated as promotion/ Upgradation (Annexure-A/32 of the written submissions).

21. In view of the aforesaid, we do not agree with the contention of the respondents in their counter reply to the effect that the implementation of the recommendations of the FTC for Pharmacists for upgradation of grade pay of Rs. 4200/- from Rs. 2800/- on completion of two years of service should be treated as 1st financial upgradation under MACP Scheme. When it has been specifically

clarified that word "promotion" is replaced by the word "placement", it can not be held that the grant of grade pay of Rs. 4200/- on non-functional and time-bound basis be treated as a financial upgradation under MACP.

22. Based on the above, we are of the view that the impugned order dated 11.11.2011 (Annexure-A/1) cannot be legally sustained and has to be quashed and set aside. We accordingly do so. With the quashing of the impugned order dated 11.11.2011, the question of any recovery to be made from the applicants would automatically not arise. Respondents are directed to forthwith implement the financial upgradation granted vide Directorate General of Health Services letter dated 16.07.2010 communicating grant of 1st, 2nd and 3rd MACP in the grade of Rs. 4600/-, Rs. 4800/- and Rs. 5400/- respectively. Consequential action shall be taken by the respondents accordingly within a period of 12 weeks from the date of receipt of a copy of this order."

The ACP Scheme was in force upto 31.08.2008 which envisaged two financial upgradations to departmental promotional hierarchy of scales, if one is not promoted in 12/24 years of service. Thus, such financial upgradations as in this case, if they were granted before 31.08.2008 when ACP was still in force, would naturally not have counted towards ACP due to merger. With merger of Pharmacist Grade-II and Grade-I, a new situation had emerged.

Thereafter, MACP came into force w.e.f. 01.09.2008 wherein if one is not promoted in his departmental hierarchy, he/she would be entitled for financial upgradation in hierarchy of scales. Since 6th CPC was in force since 01.01.2006, when merger had also happened this hierarchy of scales was in "PB-2 + GP Rs. 4600", "PB-2 + GP Rs.4800" and PB-2 + GP Rs. 5400". This was ordered by Tribunal as 1st/2nd/3rd MACP respectively. In this regard, clarifications issued in respect of MACP, vide DOP&T letter dated 09.09.2010 are also relevant.

On account of typical circumstances of Pharmacists, the ratio of this judgment is not applicable in instant case.

16.6 In the case of Hari Ram (supra), the applicant Hari Ram had joined the establishment of the High Court as Lower Division Clerk (LDC), in 1981. He was promoted as Upper Division Clerk (UDC) in 1998. Thereafter, second promotion was secured in 2007 and was given the 3rd financial upgradation in PB-2 + GP Rs. 5400, after completion of four years of service. For ease of understanding the relevant scales in 5th CPC and 6th CPC are shown in table below and may be referred.

In this case after 3rd upgradation, the applicants were in the scale of Rs. 8000-13500 (Group-B), i.e. Stage 3 in table below. Subsequently, while issuing directions for 6th CPC, Stage 3 was replaced by Stage 4 for SO/PS and it was to be granted on completion of four years of service in the scale of Rs. 7500-12000. Thus, it appears that those who completed 4 years after Shri Hari Ram, on any date after 01.01.2006 when 6th CPC had come into force, were given the scale of Rs. 8000-13500 (equivalent to PB-3 + GP Rs. 5400), i.e. Stage 4, while

applicant was in Stage 3 only.

On implementation of 6th CPC, the equivalent scales were as under:

Stage 5th CPC 6th CPC

1 Rs. 6500-10500 PB-2 - Rs. 9300-34800 + GP Rs. 4600

2 Rs. 7500-12000 PB-2 - Rs. 9300-34800 + GP Rs. 4800

3 Rs. 8000-13500 (after 4 PB-2 - Rs.9300-34800 + GP years of service). This is Rs. 5400 Group "B".

4 Rs. 8000-13500 (after 4 PB-3 - Rs. 15600-39100 + GP years of service). This is Rs. 5400 Group "A" entry scale also.

5 Rs. 10000-15200, PB-3 - Rs. 15600-39100 +GP Rs.10325-10975, Rs. 6600 Rs.10650-15850

6 Rs. 12000-16500, PB-3 - Rs. 15600-39100 +GP Rs.12750-16500, Rs. 7600 Rs.12000-18000

Thus, it appears that there was certain disparity between applicant and some other similarly placed employees. The petitioner's request in this regard was considered by a Screening Committee, which rejected the same after deliberations. This rejection was challenged in High Court in this case. Para 17 and 21 of deliberations of this Screening Committee are a pointer towards occurrence of this disparity and are contained in para 6 of this judgment. Same are reproduced below:

"17. If we look at the statement showing pay scales in the Delhi High Court w.e.f. 1.1.2006 also, the categories of SJA, SJT, Sr. Asst. Librarian, Reader, SPA and Court Officer have kept in Group-B, PB-2 Rs.9300-34,800 plus grade pay of Rs.4800 which changes to PB-3 in the scale of Rs.15,600-39100 plus grade pay of Rs.5400 on completion of 4 years. This change of Pay Band-3 on completion of four years" service was conveyed vide letter No.F.6/24/08-Judl. Suptd law/1264 dated 19.11.2013.

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21. The applicants herein referred to the report of the Screening Committee of Delhi District Courts apart from some judgments stated to be on the issue. The Screening Committee report has discussed the provisions of the ACP Scheme which clearly states that financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre. The basic difference between the ACP and the MACP scheme is that the ACP Scheme provided for next higher grade in accordance with the existing hierarchy in a cadre/category of posts whereas 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 I, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. The said Schedule of MACPS provides for next

higher grade pay from Rs. 4800 as Rs. 5400 and not Rs. 6600. Further, it may also be pointed out that the ACPS provided for two financial upgradations on completion of 12 years and 24 years of regular service whereas the MACPS provides for three financial upgradations on completion of 10, 20 and 30 years. The judgments discussed in the Screening Committee Report of District Courts as referred to by the applicants belong to the period when the MACP Scheme was not introduced as the new Scheme only in the year 2009 and the Report came immediately soon thereafter i.e. on 21.9.2010. The judgments referred to by the applicants relating to CAT and Hon"ble Punjab and Haryana High Court are not on the issue of non- functional scale of Rs. 5400 but on lower scales. Moreover, the judgements relied upon by the applicants are in personem and not in rem. These do not lay down any guidelines for all the cases of similarly placed persons nor has the DOPT come out with any OM on the issue enveloping all similarly placed persons in the Government of India. Rather, DOPT has come out with a clarification in the form of FAQs which is available on the website of the DOPT that the non-functional grade pay is to be treated as upgradation. Thus, the argument of the applicants that MACP is to be granted on promotional hierarchy and not on next higher Grade Pay does not hold good."

The pleadings of applicants are indicated in para 7 of the judgment. Same is reproduced as under:

"7. Ms. Jyoti Singh, learned senior counsel for the petitioners, argued that the denial of the third financial upgradation/MACP in the circumstances is not justified. She urges that employees of the District Courts were granted the MACPS benefit disregarding the non-functional scale of `8000-13500 in the Grade Pay of `5400/- which the petitioners now have been denied, thus resulting in discrimination."

This disparity was removed by the High Court vide their orders as under:

"18. In the present case, it is noticed that the petitioners' counterparts were granted the third financial upgradation, although they, like them were given the GP of □ 5400/-; they perform similar, if not identical functions. FC Jain (supra) is an authority that if such broadly identical functions are involved, both categories ought to be treated alike in regard to interpretation of pay norms, by the organization. Therefore, the principle of parity would result in acceptance of the petitioner's claim. The second aspect which this court would emphasize is that unlike "stagnation" or performance based increments, or placement in higher scales, the grant of □ 5400/- is automatic, after the happening of a certain event, i.e. completion of four years' service. This is quite different from promotion or placement in the selection grade, which is performance dependent or based on the availability of a few slots or vacancies (usually confined to a portion of the entire cadre: say 20%). The last reason is that both V.K. Sharma (supra) and Suresh Chand Garg (supra), in somewhat similar circumstances, accepted that the grant of a higher grade pay did not preclude the grant of the third financial upgradation.

19. In view of the foregoing analysis, the court is of opinion that the petition has to succeed. As a consequence, the respondents are directed to revise and fix the pay scales by granting the third financial upgradation, to the petitioners. They shall be entitled to consequential arrears and all consequential benefits; the payments shall carry interest @ 9 per cent per annum. The payouts shall be made to the petitioners within 8 weeks. The petition is allowed, in these terms."

Therefore, ratio of this judgment does not apply in the instant case as there is no whisper of any disparity or discrimination.

16.7 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 is, therefore, not 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 No.1 to 3 were initially appointed to Govt. service in scale of Rs.5500-9000 as Personal Assistant on 11.01.1994, 01.07.1994 and 24.03.1995 respectively. All these were promoted as Personal Secretary in scale Rs.6500-10500 on 01.03.2001, 15.06.2001 and 01.03.2001 respectively, i.e. after about 7 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. Thereafter, they were granted the non-functional scale of Rs.8000-13500 w.e.f. 01.07.2005, i.e., after 4 years of previous promotion and after total 11 years of service. This non-functional upgradation would not have counted towards 2nd ACP, which would have become due on completion of 24 years of service after initial appointment, i.e. in the year 2018, if not promoted earlier.

However, much before that stage, a 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 applicants already got one promotion as PS in the scale Rs.6500-10500 within 10 years of service, so the requirement for 1st MACP was already fulfilled. Therefore, they are to be considered only for 2nd MACP now, when it falls due on completion of 10 years from 1st promotion or required 20 years of service, whichever is earlier, if they are not promoted by this time.

The applicants were granted the first promotion in the year 2001, by when they had completed 7 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 2nd MACP was now due after 10 years of last promotion, subject to a maximum of 20 years of total service. The applicants were last promoted in 2001 and thus the 2nd MACP becomes due either 10 years later i.e. in 2011 or 20 years of total service i.e. 2014, whichever is earlier. Therefore, the 2nd MACP was due in the year 2011. However, the applicants were already granted one financial upgradation in Rs.8000-13500 scale, in the year 2005, i.e. 6 years prior to the due date. Thus, the requirement of 2nd MACP stood fulfilled with grant of this scale in 2005 which was subsequently replaced by "PB-3 + GP Rs.5400" in 6th CPC. Thereafter, the applicants are now entitled for 3rd MACP in the year 2021 as well as for promotion in departmental hierarchy only, if vacancies arise earlier and they are found eligible and DPC recommends their case.

Therefore, the plea of these three applicants for grant of 2nd MACP in the scale of PB-3 + GP Rs.6600 cannot be accepted as the same is not due now.

19. As regards the applicant No.4, she was initially appointed to Govt. service as Stenographer Grade-D on 28.02.1989. She was promoted as Personal Assistant in the scale of Rs.5500-9000 on 17.05.1994, i.e. after about 5 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. Thereafter, she was promoted to the post of PS, in the scale of Rs.6500-10500, in the year 2001, i.e., after 7 years of previous promotion and after total 12 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.

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 PS in the scale Rs.6500-10500) within 20 years of service, so the requirement for 2nd MACP was already fulfilled. Therefore, she is to be considered only for 3rd MACP now, when it falls due or on completion of required 30 years of service, whichever is earlier, if she is not promoted by this time.

The applicant was granted the second promotion in the year 2001, by when she had completed 12 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 applicant was last promoted in 2001 and thus the 3rd MACP becomes due either 10 years later i.e. in 2011 or 30 years of total service i.e. 2019, whichever is earlier. Therefore, 3rd MACP was due in the year 2011. However, the applicant was already granted one financial upgradation in Rs.8000-13500 scale, in the year 2005, i.e. 6 years prior to the due date. Thus, the requirement of 3rd MACP also stood fulfilled with grant of this scale in 2005 which was subsequently replaced by "PB-3 + GP Rs.5400" in 6th CPC. Thereafter, the applicant is now entitled for promotion in departmental hierarchy only, if vacancies arise and she is found eligible and DPC recommends her case.

Therefore, the plea of this applicant for grant of 3rd MACP in the scale of PB-3 + GP Rs.6600 cannot be accepted as 3rd MACP is no more due.

20. Thus, the plea of applicants does not gain acceptability. There is no need for any intervention by this Tribunal.

21. In the result, the OA stands dismissed being devoid of merit. There shall be no order as to costs.