

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

OA 1288/2014  
MA 1120/2014

Reserved on: 11.03.2016  
Pronounced on: 18.03.2016

**Hon'ble Mr. V. Ajay Kumar, Member (J)**  
**Hon'ble Mr. P.K. Basu, Member (A)**

1. Smt. Manju Vashistha  
Woman ASI (Min.), No.4050/D  
W/o Sh. Adarsh Vashistha  
R/o Qr.No.P-5, FRRO Police Lines,  
Safdarjung Airport, New Delhi
2. Rakesh Luthra,  
SI (Min.), No.4029/D  
S/o Late Sh. R.S. Luthra  
R/o Flat No.6, Sanskrit Nagar CGHS,  
Sector-14, Rohini,  
Delhi
3. Girish Kumar Mehta,  
SI (Min.), No.3794/D  
S/o Sh. Gopal Dass Mehta  
R/o H.No.355, Sector - 4,  
Urban Estate, Gurgaon
4. Smt. Sunita Sharma,  
Woman ASI (Min.), No.4049/D  
W/o Sh. Ashok Kumar Sharma  
R/o 257-A, Flat No.1, 2<sup>nd</sup> Floor,  
Angel Apartment,  
Chhattarpur, New Delhi
5. Jaipal Singh  
ASI (Min.), No.1131/D  
S/o Sh. Sadhu Singh  
R/o T-43, Hill Area Near Military Gate,  
West Patel Nagar, New Delhi
6. Om Prakash  
SI (Min.) No.4038/D  
S/o Late Shri Charan Singh  
R/o Qr.No.D-2, Type-II,  
New Police Lines, Kingsway Camp,  
Delhi-110009

7. Pradeep Kumar  
ASI (Min.) No.4394/D  
S/o Shri Om Prakash  
R/o B-1307, Shastri Nagar,  
Delhi-110092
8. Ram Niwas,  
SI (Min.), No.94/D  
S/o Shri Balwant Singh  
R/o A-30, Type - III  
New Police Lines, Kingsway Camp,  
Delhi-110009
9. Smt. Anuradha  
Woman ASI (Min.) No.220/D  
W/o Shri N.S. Rawat  
R/o H.No.36, Sector-9  
R.K. Puram, New Delhi
10. Mohinder Kumar  
SI (Min.) No.D-1533  
S/o Shri Ram Karan  
R/o RZ/M-6, Phase-IV  
Prem Nagar, Najafgarh,  
New Delhi
11. Shiv Charan,  
SI (Min.) No.3605/D  
S/o Late Shri Gaje Singh  
R/o 1225, Sector-4  
R.K. Puram, New Delhi-22
12. Smt. A. Chitra  
Woman ASI (Min.) No.4043/D  
W/o late Shri Krishnamurthy,  
R/o F-89, Nauroji Nagar,  
New Delhi-110029
13. Sh. Surender Kumar  
ASI (Min.) No.96/D  
S/o Late Shri Kasturi Lal,  
R/o 8-A/28, Geeta Colony,  
Delhi-110031
14. Sh. Narender Kumar  
ASI (Min.) No.65/D  
S/o Late Shri Sukhbir Singh  
R/o H.No.B-118, North Ghonda,  
Delhi-110053
15. Bhupinder Singh  
ASI (Min.) No.191/D  
S/o Late Sardar Joginder Singh

R/o H.No.83, Baldev Park,  
Delhi-110051

16.Sh. Satender Pal  
ASI (Min.) No.4389/D  
S/o Late Shri Manohar Lal  
R/o Qr.No.A-1, Type-III,  
P.S. Mandawli Fazalpur,  
Delhi

17.Prem Pal Singh  
ASI (Min.) No.1960/D  
S/o Late Shri Raghubir Singh  
R/o Qr.No.53, Police Colony  
Hauz Khas, New Delhi-16

...Applicants

(Through Shri Ajesh Luthra, Advocate)

Versus

1. Union of India  
Through its Secretary,  
Government of India  
Ministry of Home Affairs,  
UTP Section, North Block,  
New Delhi
2. Union of India  
Through its Secretary  
DOP & T  
Ministry of Personnel, Public Grievances and Pensions,  
Department of Personnel & Training,  
Establishment (D)  
North Block, New Delhi
3. Director,  
Government of India  
Ministry of Personnel, Public Grievances and Pensions,  
Department of Personnel & Training,  
Establishment (D)  
North Block, New Delhi
4. Commissioner of Police  
Delhi Police Hdqrs.,  
MSO Building,  
I.P. Estate, New Delhi
5. Deputy Commissioner of Police,  
Headquarters  
Delhi Police Hdqrs.  
MSO Building,  
I.P. Estate, New Delhi
6. Addln. Deputy Commissioner of Police,

South – West Distt.,  
P.S. Dwarka, Sector-23,  
New Delhi

... Respondents

(Through Shri B.N.P. Pathak, Advocate)

### ORDER

Mr. P.K. Basu, Member (A)

The applicants were appointed as direct recruit Head Constable (Ministerial) on different dates in Delhi Police in the year 1984, 1985 and 1986. They were promoted as ASI (Ministerial) on regular basis on different dates. The Department of Personnel and Training (DoP&T) issued an OM dated 19.05.2009 regarding grant of Modified Assured Career Progression Scheme (MACPS) for the Central Government Civilian Employees. The details of the MACPS and conditions for grant of financial upgradation under the Scheme have been given in Annexure-1 of the OM dated 19.05.2009. We extract below the conditions relied upon by the applicants in support of their claim, for easy reference:

#### **"28. Illustrations**

- (i) If a Government servant (LDC) in PB-I in the Grade Pay of Rs.1900 get his first regular promotion (UDC) in the PB-I in the Grade Pay of Rs.2400 on completion of 8 years of service and then continues in the same Grade Pay for further 10 years without any promotion then he would be eligible for 2<sup>nd</sup> financial upgradation under the MACPS in the PB-I in the Grade Pay of Rs.2800 after completion of 18 years (8+10 years).
- (ii) In case he does not get any promotion thereafter, then he would get 3<sup>rd</sup> financial

upgradation in the PB-II in the Grade Pay of Rs.4200 on completion of further 10 years of service i.e. after 28 years (8+10+10).

- (iii) However, if he gets 2<sup>nd</sup> promotion after 5 years of further service in the pay PB-II in the Grade Pay of Rs.4200 (Asstt Grade/ Grade 'C') i.e. on completion of 23 years (8+10+5) then he would get 3<sup>rd</sup> financial upgradation after completion of 30 years i.e. 10 years after the 2<sup>nd</sup> ACP in the PB-II in the Grade Pay of Rs.4600.

In the above scenario, the pay shall be raised by 3% of the total pay in the Pay Band and 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 or in the higher Grade Pay. Only the difference of grade pay would be admissible at the time of promotions."

2. At annexure A-5, the applicants have provided the relevant service details of all the applicants. We take the case of the first applicant in this list namely Smt. Manju Vashistha. The relevant dates for Smt. Manju Vashistha are as follows:

- |      |                                  |   |            |
|------|----------------------------------|---|------------|
| i.   | Date of enlistment as HC (Min.)  | - | 3.03.1986  |
| ii.  | Date of regular promotion as ASI | - | 11.11.1991 |
| iii. | Date of regular promotion as SI  | - | Not yet    |
| iv.  | Granted second MACPS             | - | 1.09.2008  |
| v.   | Granted third MACPS              | - | 11.11.2011 |

3. From the above, it will be clear that Smt. Manju Vashistha had received one promotion from Head Constable to ASI, therefore, she was not entitled for first upgradation under ACP. Her second upgradation would be due on completion of 24 years of service i.e. 3.03.2010. However, in between, with effect from

1.09.2008, MACPS has been introduced and she was granted second upgradation under MACPS with effect from 1.09.2008 as under MACPS, upgradations were to be on completion of 10 years of service (first upgradation), 20 years (second upgradation) and 30 years (third upgradation). Since Smt. Manju Vashistha completed 20 years of service on 3.03.2006 and MACPS was made effective from 1.09.2008, she was granted the second MACP with effect from 1.09.2008. Upto this point, there is no controversy between the applicants and the respondents. The controversy starts in connection with grant of third MACP.

4. The respondents vide order dated 5.11.2012 (Annexure A-8) granted third MACP benefit to Smt. Manju Vashistha, No.4050/D (27860042) [mentioned as Manju Bala in the order and not Smt. Manju Vashistha] with effect from 11.11.2011 i.e. on completion of 20 years of service as ASI from the date of first promotion on 11.11.1991. Later, the respondents realized that they have wrongly applied MACP guidelines going by the illustrations under para 28 of the MACPS (quoted above) whereas the DoP&T has clarified as follows vide their note dated 18.02.2014 (Annexure - 3) :

- "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.

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 1.09.2008 – the date of effect of the MACPS itself. Now either 10 years from 1.09.2008 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.”

5. This was communicated to the Police Headquarters (PHQ) vide Ministry of Home Affairs (MHA) letter dated 26.02.2014 (Annexure - 2) and further sent to all subordinate offices vide PHQ letter dated 10.03.2014 (Annexure - 1). Show Cause Notices were issued to the applicants in March 2014 (Annexure - 4). Being aggrieved by this action, the applicants have approached this Tribunal with the following prayers:

- (a) Quash and set aside the impugned actions/orders placed at Annexure A/1, Annexure A/2,

Annexure A/3 and Annexure A/4 with all consequential benefits.

(b) Award cost of the proceedings.

6. The applicants state that as per para 28 (A (i)) of the OM dated 19.05.2009, quoted above, if an LDC gets regular promotion after 8 years of service and then continues in the same Grade Pay for further 10 years without any promotion, he would be eligible for second financial upgradation under MACP. Since MACP came into effect from 1.09.2008, the second upgradation from 1.09.2008 has rightly been given. It is further argued that as per para 28 (A (ii)) of the OM dated 19.05.2009, the applicants should get third financial upgradation after 10 + 10 i.e. 20 years of service and hence the third upgradation given from 11.11.2011 is absolutely correct.

7. The applicants produced before us an order of the Ernakulam Bench of the Tribunal in OA 905/2012, **R. Chandramohan Nair Vs. Union of India and others**. The applicant in the cited case was appointed on 19.06.1985 as Fitter Skilled. He was promoted as Highly Skilled - II from 10.05.1991. The issue before the Tribunal was whether third upgradation should be granted with effect from 10.05.2011 i.e. on completion of 20 years of service or not. The Tribunal came to the conclusion that third financial upgradation from 10.05.2011 is to be sustained. The learned counsel for the applicants states that since this is an identical issue decided by a

Coordinate Bench, the applicants in the instant case deserve to be granted the same relief.

8. Learned counsel for the respondents states that DoP&T is the final arbiter in matters of interpretation/ clarification of doubt. Therefore, the respondents had consulted DoP&T and its advice was obtained, already cited above. The bottom line is that even under para 28, under the heading 'illustrations', second and third financial upgradations under MACPS are to be given after 10 years of service in the same grade. Therefore, since second MACP to Ms. Manju Vashista has been granted with effect from 1.09.2008, the third upgradation under MACPS is due to her only in 2018. In fact, it becomes amply clear from para 1 of the MACP guidelines, which is quoted 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.**"

9. Learned counsel for the respondents also argued that the order passed by the Ernakulam Bench of the Tribunal in R. Chandramohan Nair (supra) will not apply in this particular case as the clarification issued by DoP&T was not before the Tribunal. Moreover, the Tribunal also did not consider the provisions of MACP (para 1) as pointed out above, thus rendering the order per incuriam.

10. We have heard the learned counsel for the parties and gone through the pleadings available on record.

11. In our view, a comprehensive reading of the MACP guidelines makes it clear that between an upgradation/promotion and the next upgradation, the incumbent has to complete 10 years of service in that grade. Para 1 of annexure to MACP guidelines and even para 28 suggests that. However, a Coordinate Bench, has taken a contrary view in R. Chandramohan Nair (supra). Therefore, this matter needs to be placed before a larger Bench for adjudication of the following:

“Whether for 2<sup>nd</sup>/ 3<sup>rd</sup> upgradation under the MACPS it is essential that the incumbent completes 10 years of service in the existing grade or not?”

The matter may be placed before the Hon’ble Chairman for appropriate orders, on administrative side.

( P.K. Basu )  
Member (A)

( V. Ajay Kumar )  
Member (J)

/dkm/