

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**OA No.988 of 2014
MA No.872 of 2014**

New Delhi, this the 21st day of March, 2014

HONBLE SHRI G. GEORGE PARACKEN, MEMBER (J)
HONBLE SHRI SHEKHAR AGARWAL, MEMBER (A)

1. Pradeep Kumar, AE (C)
S/o Sh. Mahatma Singh,
R/o Flat No.115, Plot No.29,
Swastik Kunj, Sector-13,
Rohini, Delhi-110085.
2. Mulkh Raj, AE (C)-P
S/o Sh. Ram Rakha,
100/18, Deol Nagar,
Nakodar Road, Jalandhar, Punjab.
3. Ashok Kumar Doharey, AE (C)-P,
S/o Shri Late Prasad Dohare,
R/o Flat No.494, Sector-E/2,
Vasant Kunj, New Delhi-110070.
4. Prakesh Singh, AE (C)-P,
s/o Sh. Pat Ram Singh,
R/o H.No.149A, Dilshad Garden,
Delhi-110095.
5. P.K. Gupta, AE (C)-P,
S/o Late Shri Viswanath Prasad,
R/o Chhoti Khagaul, Near Haveli,
Khogaul, Patna 801105.
6. A. Kalam, AE (C)-P,
S/o Sh. Abdul Hafiz,
R/o 19/10, Sector-1,
Pushp Vihar, M.B. Road,
New Delhi-17.
7. Manoj Kumar, AE (C)-P,
S/o Sh. Rameshwar Sinha,
R/o Q. No.1348, Type-IV, Sector-12,
R.K. Puram, New Delhi-110022.
8. Kedar Mandal, AE (C)-P,
S/o Late Sh. Sukdeo Mandal,
R/o Chanakya Vihar Colony,
Barari, P.O. Barai, Distt. Bhagalpur,
Bihar-812003.

9. S.K. Sharma, AE (C)-P,
s/o Late Shri L.P. Verma,
R/o 149/8, Dr. Gupta Market,
Flat No.301, Kishangarh,
Vasant Kunj, New Delhi-70.
10. R.B. Singh, AE (C)-P,
s/o Late Sh. Raja Ram Singh,
R/o Karanpur, PO Bariya,
Distt. Patna, Bihar,
11. S. Khan, AE (C)-P,
S/o late Sh. Rashid Khanr,
Flat No.301, Zeenat Apartment,
Sama Pura, Rajabazar,
Patna, Bihar-800014.
12. D.P. Sharma, AE (C)-P8
S/o late Shri Ram Kuber Singh,
R/o Q. No.136, Type-IV, Sector-3,
Sadiq Nagar, New Delhi-49.
13. Sh. S. Khalko, AE (C)-P8
S/o late Sh. Ahlad Khalko,
R/o Vill. Chtarkota, (Barkotol),
P.O. Pali, PS- Ratu,
Ranchi, Jharkhand.
14. Ajay Sahdev, AE (C)-P8
S/o Late Sh. O.P. Sahdev,
R/o H.No.B-111, Sector-30,
1st Floor, Noida-201301.
15. R.R. Gupta, AE (C)-P8
S/o Late Sh. Ram Bachan Gupta,
R/o Nain Bhawan, Kilburn Colony,
P.O. Binoo, Ranchi, Jharkhand-834002.
16. Deepak Gupta, AE (C)-P8
S/o Sh. I.C. Gupta,
R/o Flat No.12, Shubham Apartment,
Plot No.37, I.P. Ext. Patparganj,
Delhi-92.
17. D.S. Deswal, AE (C)-P8
S/o Sh. Mehar Singh Deswal,
R/o 1284, Sector-45, Gurgaon,
Haryana-133002.
18. D.K. Pandit, AE (C)-P8
s/o Late Shri Ram Mulan Pandit,
R/o Q. No.N-198, Type-IV, Sector-8,
R.K. Puram, New Delhi-22.

19. Parveen Sharma, AE (C)-P8
S/o Sh. Om Parkash Sharma,
R/o H.No. 164, Pkt-E-18,
Sector-3, Rohini, Delhi.
20. R.C. Chaturvedi, AE (C)-P8
s/o late Shri Lalmani Chaturvedi,
R/o A-293, Gali No.11, West Vinod Kumar,
Delhi-92.
21. Paramjet Singh, AE (C)-P8
S/o Sh. Gurumukh Singh,
r/o 11/1403, Malviya Nagar,
Jaipur, Rajasthan-302017.

.....Applicants

(By Advocate : Shri M.K. Bhardwaj)

versus

1. Secretary,
Ministry of Information & Broadcasting,
Shastri Bhawan, New Delhi.
2. The Director General,
All India Radio, Sansad Marg,
New Delhi.
3. The Chief Engineer (Civil),
Civil Construction Wing, AIR, Soochna Bhawan,
CGO Complex,
New Delhi-110003.

.....Respondents

ORDER (ORAL)

SHRI G. GEORGE PARACKEN, MEMBER (J) :

MA 872/2014

This MA has been filed by the applicants under Rule 4 (5) of the CAT (Procedure) Rules, 1987 seeking permission of this Tribunal to join together in a single Original Application.

2. For the reasons stated therein, this MA is allowed.

OA No.988 of 2014

The applicants in this Original Application are aggrieved by the alleged arbitrary and discriminatory action of the respondents in not granting them the scale of pay of Rs.15600-39100 with Grades Pay of Rs.6600/- and 7600/- as 2nd and 3rd financial up-gradations under MACP Scheme from due dates, as given to similarly placed persons/counterparts who were appointed as JE (Civil/Electrical) by following the same method of recruitment and the same rules as applicable to them. They have, therefore, made several representations to the Respondents to grant them also the same benefits but the Respondents have not considered them so far.

2. They have, therefore, filed this OA seeking the following reliefs:-

- (a) To declare the action of the respondents in not granting the scale of Rs.15600-39100 (PB-3) with Grade Pay of Rs.6600 & 7600 as given to similarly placed persons vide order dated 25.10.2013 to the applicants as illegal and arbitrary.
- (b) To direct the respondents to grant scale of Rs.15600-39100 with Grade Pay of Rs.6600 & 7600 as 2nd & 3rd financial up-gradation to the applicants under MACP from due date with all arrears of pay.
- (c) To declare the OM/MACP dated 19.05.2009 as unconstitutional to the extent the same deny the next promotional scale attached to the promotion post as 1st, 2nd & 3rd financial up-gradation as illegal, arbitrary and unjustified.

3. According to the Applicants, the case is squarely covered by an Order of the Chandigarh Bench of this Tribunal in O.A. No.1038/CH/2010 Rajpal son of Shri Tilak Ram v. Union of India & others where it was held as under:-

11. We have heard the learned counsel for the parties and considered the documents on record.
12. There is no dispute that the applicant is holding the post of Photocopier, which is an isolated post, having no avenues for promotion. It is also not disputed that the post held by the applicant had been declared equivalent to the post of LDC/Hindi Typist etc. by the Tribunal as well as the High Court by judicial pronouncements in matters of grant of ACP, which have attained finality and stands implemented also. Accordingly, applicant was granted 1st ACP (under the old ACP) w.e.f. 9.8.99 in the pay scale of Rs. 4000-6000.
13. It has also been settled that the ACP would be granted on completion of the required years of service in the hierarchy of posts for the posts of LDC/Hindi Typists, and not in the next higher scale in the recommended scales. The same principle would have to be applicable in regard to grant of MACP to the applicant. The only difference is that while in case of ACP two financial up-gradations were granted on completion of 12 and 24 years of service, in case of MACP, three up-gradations on intervals of 10, 20 and 30 years of service.
14. The respondents have placed reliance on para 13 of the MACPS, which reads as under:
 13. Existing time-bound promotion scheme, including insitu promotion scheme, Staff Car Driver Scheme or any other kind of promotion scheme existing for a particular category of employees in a Ministry/Department or its offices, may continue to be operational for the concerned category of employees if it is decided by the concerned administrative authorities to retain such Schemes, after necessary consultations or they may switch-over to the MACPS. However, these Schemes shall not run concurrently with the MACPS.

Reliance has further been placed on decision taken in the second meeting of the Joint Committee on MACPS held under the Chairmanship of the joint Secretary DoPT was circulated. Item No.3 of the Agenda for the said meeting reads as under:

The MACP Scheme provides for placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay after 10,20 and 30 years of service. On the other hand the earlier ACP Scheme provided for placement to higher pay scale of the next promotion post in the hierarchy of the pay scale after 12 and 24 years of service taken from date of induction in service.

15. Be that as it may, the principle enunciated and settled by the Tribunal/High Court for grant of ACP cannot be changed and the same principle would apply for grant of MACP to him. The only difference is of number of years required to be completed. We find no justification to take a different view in the matter

16. For the foregoing reasons, the impugned order dated 9.8.2010, (Annexure A-1) qua the applicant, fixing his pay in PB-1 with grade pay of FR 2400/- under the second MACP, and the order dated 10.8.2010 (Annexure A-2) are hereby quashed and set aside. Consequently, the respondents are directed to grant second financial up-gradation to the applicant under the MACPS from due date fixing his pay in the hierarchy of posts decided in his case earlier and to pay the resultant arrears without interest, within a period of 2 months from the date of receipt of a copy of this order.

17. The OA stands disposed of in the above terms. No costs.

4. The respondents have challenged the aforesaid order before the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP NO.19387/2011 decided on 19.10.2011. The Hon'ble High Court of Punjab and Haryana at Chandigarh held that there was no infirmity in the aforesaid order passed by the Chandigarh Bench of this Tribunal. The relevant observations of the said order are extracted hereunder:

Upon implementation of the 6th Central Pay Commission, the scale of Rs.3050-4590/- was kept in pay band-I, Rs.5,200-20,200/- with grade pay of Rs.1,900/-, the scale of Rs.4,000-6,000/- was also kept in pay band-I with grade pay of Rs.2,400/- and the scale of Rs.5,500/-9,000/- was kept in pay band-II in pay scale of Rs.9,300-34,800/- with grace pay of Rs.4,200/- increased to Rs.4,600/-. In terms of MACP Scheme, respondent no.1 was granted the lower scale by keeping in pay band I of Rs.5,200-20,200/- with grade pay of Rs.2,400/-. This was done in terms of order dated 09.08.2010. Accordingly, respondent No.1 approached the CAT contending that he is entitled to be granted the scale of Rs.5,500-9000/- towards the 2nd Financial Up-gradation at par with the post of Hind Typist and LDC. Such claim of respondent No.1 has been upheld by the CAT in the impugned order dated 31.05.2011.

5. Later on the Hon'ble Supreme Court has also dismissed the petition(s) for Special Leave to Appeal (Civil) (CC No.7467/2013) filed by the Government and upheld the judgment of the Punjab & Haryana High Court in CWP No.19387/2011 (supra).

6. The learned counsel for Applicants has also submitted that this Bench allowed O.A. No.904/2012 Sanjay Kumar, UDC & others v. Union of India & others vide order dated 26.11.2012 following the directions given by the Chandigarh Bench. The relevant part of the said Order reads as under:-

7. In our considered view, the present OA is squarely covered by the aforesaid judgment of Chandigarh Bench, as upheld by the Hon'ble High Court of Punjab and Haryana at Chandigarh.

8. In fact, the respondents have wrongly interpreted the terms and conditions mentioned in the MACP Scheme, issued by the Deptt. of Personnel & Training, in the case of the applicants. By the said Scheme, the eligible government servants are to be placed in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay and not merely in the next higher scale of pay as per the recommendations of the 6th Pay Commission. In the hierarchy after the scale of UDC, the next scale is that of Assistant. Therefore, the respondents should have given the next higher grade pay and pay band attached to the next promotional post in the hierarchy, namely, the Assistants carrying the pay scale of Rs.9300-34800 and the grade of Rs.4200/-.
9. In view of the above position, this OA is allowed. The respondents are directed to grant scale of pay of Rs.9300-34,800/- with grade pay of Rs.4200/- attached to the said promotional post of Assistant/OS from the due date to the applicants.
10. The aforesaid directions shall be complied with within the period of two months from the date of receipt of a copy of this order, subject to the other conditions mentioned in the MACP Scheme.

7. In another O.A. No.864/2014 Shri Om Prakash & others v. Secretary (NCERT) decided by this Tribunal, the following directions were issued:-

3. In our considered view, once an order has been passed by this Tribunal and it has also been upheld at the level of the Supreme Court, there is no question of waiting for an approval from any Govt. department for implementation of the same. The respondents, therefore, should have considered the representations of the applicants on merits.

4. In view of the above position, we dispose of this OA at the admission stage itself with the direction to the respondents to consider the representations of the applicants in the light of the judgment of Punjab and Haryana High Court in CWP No.19387/2011 (supra) as upheld by the Apex Court in SLP (CC) No.7467/2013(supra) and decide their cases under intimation to them. The aforesaid exercise shall be completed within a period of one month from the date of receipt of a copy of this order. There shall be no order as to costs.

8. In view of the above position, we dispose of this Original Application with the same directions as given by us in O.A. No.864/2014 (supra). There shall be no order as to costs.

(SHEKHAR AGARWAL)
MEMBER (A)

(G. GEORGE PARACKEN)
MEMBER (J)

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