

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-1288/2014

Reserved on : 11.05.2016.

Pronounced on : 23.05.2016.

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. Shekhar Agarwal, 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, 2nd 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 Raghbir 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)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The following question has been drawn by a Division Bench of Principal Bench of this Tribunal:-

“Whether for 2nd/3rd upgradation under the MACP Scheme it is essential that the incumbent completes 10 years of service in the existing grade or not?

2. Brief facts of the case are that the applicants were appointed as Head Constables (Ministerial) in Delhi Police on different dates between 1984 and 1986. While all of them are similarly placed, for the sake of convenience, we discuss hereunder the facts of applicant No.1 (Smt. Manju Vashishta). The relevant dates for her are as follows:-

i.	Date of enlistment as HC (Min.)	-	03.03.1986
ii.	Date of regular promotion as ASI	-	11.11.1991
iii.	Date of regular promotion as SI	-	Not yet
iv.	Granted second MACP	-	01.09.2008
v.	Granted third MACP	-	11.11.2011

2.1 The respondents had initially granted the third Modified Assured Career Progression (MACP) to her w.e.f. 11.11.2011 as mentioned above. However, later on they thought that they had committed a mistake and made a reference to DoP&T. Their reference was considered by DoP&T and the following clarification was provided to them:-

“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 1st, 2nd and 3rd 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 2nd MACP could be given after overall 18 years and the 3rd one after overall 28 years, the fact remains that in both the cases the crucial 2nd and 3rd MACPS is being given only after the mandatory 10 years residency for the 2nd and 3rd MACP respectively. Thus, the 3rd MACP is intended to be given based on either 10 years from the 2nd 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 2nd 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 3rd 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."

2.3 In view of the aforesaid clarification, the respondents issued a show cause notice to the applicant for withdrawing the third MACP benefit earlier granted to her. Being aggrieved by this action, she has approached this Tribunal with the following prayer:-

- “(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 costs of the proceedings and

- (c) pass any other order/direction which this Hon'ble Tribunal deem fit and proper in favour of the applicants and against the respondents in the facts and circumstances of the case."

3. The issue was considered by a Division Bench of Principal Bench of Principal Bench of this Tribunal. According to their view a comprehensive reading of the MACP guidelines makes it clear that between one upgradation/promotion and the next upgradation there must be a gap of 10 years. In this regard, they have cited para-1 of the Annexure-I to the MACP guidelines and also para-28 of the same guidelines. They have also stated that DoP&T is the final arbiter in such matters and their clarification was also to this effect. As such this O.A. deserves to be dismissed.

4. On the other hand, Ernakulam Bench of this Tribunal in OA-905/2012 (**R. Chandramohan Nair Vs. UOI & Ors.**) in their judgment dated 08.06.2015 have taken a different view in almost identical circumstances. The applicant of that O.A. was initially appointed as a Fitter Skilled w.e.f. 19.06.1985. His service was later regularized. He was promoted as HS-II in the pay scale of Rs. 1200-1800 w.e.f. 10.05.1991. HS-I and HS-II were given a common replacement scale of Rs.4000-6000 by the IVth Central Pay Commission (CPC). The Assured Career Progression (ACP) Scheme was implemented w.e.f. 09.08.1999 by the Government on the recommendations of Vth CPC. The applicant was not entitled to the benefit of first ACP since he had already got one promotion prior to 01.09.1999. Before he could get second upgradation under the then ACP Scheme, which would have become due on 19.06.2009, MACP Scheme came into effect from 01.09.2008 on the recommendations of VI CPC. The applicant was granted the second financial upgradation under MACP Scheme w.e.f. 01.09.2008. Meanwhile, the Government of India restructured the cadre of Skilled Artisans w.e.f. 01.01.2006. The applicant was placed in PB-I with grade pay of Rs.2800. He was also originally granted third financial upgradation in PB-II

with grade pay of Rs. 4200 w.e.f. 10.05.2011. This order was passed taking into consideration the fact that the applicant was granted only one promotion w.e.f. 10.05.1991. The respondents therein, however, passed an order rejecting grant of third MACP to the applicant from 10.05.1991. This order was challenged by the applicant in the aforesaid O.A.

4.1 Ernakulam Bench holding that the applicant was granted first promotion only on 10.05.1991 and stating that what the applicant got by way of restructuring w.e.f. 01.01.2006 was what he would have been entitled to notionally from 2001, upheld his claim for grant of third financial upgradation under the MACP Scheme w.e.f. 10.05.2011.

5. We have considered the judgments of Division Bench of the Principal Bench as well as Ernakulam Bench. The Division Bench of the Principal Bench has gone strictly by the provisions of the Scheme as issued vide O.M. No. 35034/3/2008-Estt.(D) dated 19.05.2009. On the other hand, the view of the Ernakulam Bench is that by denying third financial upgradation to the applicant therein w.e.f. 10.05.2011, the very purpose of the MACP Scheme was getting defeated inasmuch as there was a gap of more than 10 years between the first and second promotion of the applicant. Ernakulam Bench has, therefore, held that the promotion granted to the applicant w.e.f. 01.01.2006 should be notionally assumed to have been granted him w.e.f. 2001 making him eligible for third upgradation in 2011.

6. We have examined the provisions of the ACP Scheme as well as the MACP Scheme. The ACP Scheme, which came into effect from 09.08.1999 provided for two financial upgradations on completion of 12 and 24 years of service. It was also provided in the Scheme that these upgradations were to be available to the employee only on completion of the prescribed periods of

service. Thus, if an employee gets first promotion before completion of 12 years of service, the second upgradation was to be granted to him only on completion of 24 years of regular service and not within 12 years of getting the first promotion. For this reason, the applicant (Smt. Manju Vashishta) after getting first promotion on 11.11.1991 was not eligible for grant of second financial upgradation under the ACP Scheme till she had completed 24 years of service i.e. till 03.03.2010. On this issue there is no dispute between the parties.

7. The MACP Scheme introduced by the Government w.e.f. 01.09.2008 provided for three financial upgradations on completion of 10, 20 and 30 years of service. However, Illustration in para-28 of the aforesaid Scheme reads as follows:-

“(i) If a Government servant (LDC) in PB-I in the Grade Pay of Rs.1900 gets 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 2nd 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 3rd financial upgradation in the PB-II in Grade Pay of Rs.4200 on completion of further 10 years of service i.e. after 29 years (8+10+10).

(iii) However, if he gets 2nd 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 years) then he would get 3rd financial upgradation after completion of 30 years i.e. 10 years after the 2nd ACP in the PB-II in the Grade Pay of Rs.4600.”

8. It is obvious that under the Scheme if an employee is able to earn promotion in his cadre prior to completing 10 years, this benefit is carried over while commuting his eligibility for the next financial upgradation under this Scheme. Thus, if he gets first promotion in 08 years then he need not wait upto 20 years for getting the benefit of second financial upgradation under the

MACP Scheme and can get it in 18 years after expiry of 10 years from the date of his promotion. Thereafter, for getting benefit of third financial upgradation under the MACP Scheme, he need not wait for completion of 30 years of service and can get the same on completion of 28 years.

9. A distinctive feature of the MACP Scheme is that it provides that an employee does not ever have to wait for more than 10 years for getting benefit of the next upgradation meaning thereby that employees become entitled to upgradation at regular intervals of 10 years. Clearly, in this respect the MACP Scheme was different from ACP Scheme where the employee had to wait for 24 years of service to get the benefit of second ACP Scheme even after the first promotion to him was granted prior to completing 12 years of service. In the case of ACP, gap between first promotion and second ACP would in that eventuality be more than 12 years.

10. In the light of the aforesaid, we examine the facts of the instant case. Applicant No.1 had got first promotion on 11.11.1991. Grant of second MACP Scheme benefit to her was delayed as the MACP Scheme came into existence from 01.09.2008. She could be granted benefit under this Scheme only w.e.f. that date. Now as far as the third MACP is concerned, if DoP&T advice is accepted, the applicant would have to wait for 10 years counted from 01.09.2008 or for 30 years counted from 03.03.1986 i.e. the date of appointment of the applicant in service.

11. In our opinion, this would go against the distinctive feature of MACP Scheme, which provides for upgradations at regular intervals of 10 years. This is because if the applicant is asked to wait for 30 years counted from 03.03.1986 for third MACP Scheme benefit, it will go against the illustration given in para-28 of the MACP Scheme cited above as the benefit of early promotion granted to the

applicant on 11.11.1991 would get negated. On the other hand, if the applicant is asked to wait for 10 more years counted from 01.09.2008 the date of grant of second MACP Scheme benefit to her, benefit of third MACP Scheme would become due only on 01.09.2018 i.e. on completion of 32 years of service. This also goes against the MACP Scheme itself, which provides for grant of three financial upgradations to an employee within 30 years of service.

11.1 In view of the above, the advice of DoP&T rendered in the instant case becomes unsustainable and cannot be adhered to.

12. It is noteworthy that the second MACP Scheme benefit has been granted to the applicant only w.e.f. 01.09.2008 i.e. after a gap of more than 16 years from the date of her first regular promotion. The date 01.09.2008 is fortuitous as it happens to be a date from which MACP Scheme was implemented. Otherwise, it has no relevance to the service record of the applicant since it is not the date on which the applicant completed either 10 or 20 years of service nor it is the date on which she completed 10 years of service after getting first promotion. Her second MACP Scheme benefit got delayed only because MACP Scheme came into existence late. Hypothetically if MACP Scheme had come into existence from an earlier date, she would have got second MACP Scheme benefit on any date after 11.11.2001 after completion of 10 years of service from the date of her first regular promotion. However, due to late implementation of MACP Scheme, she has lost benefit of almost 07 years of service. Even then the date of second MACP Scheme benefit cannot be preponed since before 01.09.2008 there was no MACP Scheme in existence.

13. In our opinion, the situation as it exists in the case at hand has not been envisaged in the MACP Scheme. The Scheme has left this area uncovered and is silent on this aspect. No provision has been made for preventing loss of service

to those employees, who have suffered only on account of date of implementation of the MACP Scheme. We have also seen that determining date of grant of third MACP Scheme benefit to the applicant No.1 based on her initial date of recruitment or on 01.09.2008, the date on which she got the benefit of second MACP Scheme can lead to erroneous results, which are contrary to the very provisions of the MACP Scheme. Under these circumstances, the only date which can be used as reference for determining the date from which third MACP Scheme benefit can be granted to the applicant is the date of her regular promotion as ASI i.e. 11.11.1991. Therefore, third MACP Scheme benefits should be rightfully given to her after 20 years of service counted from 11.11.1991.

14. On the basis of above analysis, we come to the conclusion that the question drawn by a Division Bench of the Principal Bench of this Tribunal has to be answered in the negative. We are inclined to agree with the judgment of Ernakulam Bench of this Tribunal in OA-905/2012(supra) albeit for different reasons, in which benefit of third upgradation under MACP Scheme has been granted to the applicant therein after completion of 20 years counted from the date of his promotion.

15. Consequently, we allow this O.A. (No. 1288/2014) and quash the impugned orders at Annexures A/1, A/2, A/3 and A/4 with all consequential benefits. No costs.

(Shekhar Agarwal)
Member (A)

(Justice M.S. Sullar)
Member (J)

(Justice Permod Kohli)
Chairman

/Vinita/