No. 22034/04/2013-Estt.(D)
Government of India
Ministry of Personnel Public Grievance & Pensions
Department of Personnel & Training
***

North Block, New Delhi
Dated: 01.03.2016

Office Memorandum

Subject :- References/Representations/Court Cases in various Ministries/Departments/ Organisations for grant of **MACPS benefits in the promotional hierarchy** - reg.

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In continuation of DOPT's earlier O.M. of even no. dated 20.01.2016 on the above mentioned subject, the undersigned is directed to forward a copy of the decision of Hon'ble CAT, Ahmedabad bench in OA No. 120/000018/2015 filed by Shri Manubhai B. Rathore Vs. UOI &Ors whereby the demand of the applicant for MACP in promotional Hierarchy has been dismissed.

G Jayanthi

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All Ministries/Departments of the Government of India).

Copy to :-

I. President's Secretariat/Vice President's Secretariat/Prime Minister's Office/Supreme Court/Rajya Sabha Secretariat/Lok Sabha Secretariat/ Cabinet Secretariat/UPSC/CVC/C&AG/Central Administrative Tribunal (Principal Bench), New Delhi.
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3. Secretary, National Commission for Minorities.
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5. Secretary, Staff Side, National Council (JCM), 13-C, Ferozeshah Road, New Delhi.
6. All Staff Side Members of the National Council (JCM).
7. NIC [for uploading this OM on the website of DOPT (ACP)].
8. Hindi Section, DOPT for Hindi version.

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upgradation with effect from 01.09.2008 in Pay Band of Rs. 9300-34800 (PB-2) with Grade Pay of Rs. 4800/-. The next promotional post of Assistant Executive Engineer carries the Grade Pay of Rs. 5400/- in Pay Band of Rs. 15600-39100 (PB-3). According to the applicant, on granting the benefit of 2nd financial upgradation under the MACP Scheme by order dated 10.06.2013 vide Annexure A-4, his Grade Pay should have been fixed at Rs. 5400/- instead of Grade Pay of Rs. 4800/- .

4. The applicant submits that the issue as to whether the Grade Pay should be given on the next promotional post in the hierarchy/cadre or not while granting financial upgradation under MACP Scheme, was the subject matter before the Chandigarh Bench and the Principal Bench of this Tribunal wherein it was held that financial upgradation should be given in the next promotional post. By placing reliance upon the orders of the Chandigarh Bench of the Tribunal dated 31.05.2011 in O.A. No. 1038/CH/2010 (**Raj Pal vs. Union of India & Others**) and the Principal Bench of the Tribunal dated 26.11.2012 in O.A. No. 904/2012 (**Sanjay Kumar and Others vs. The Secretary Ministry of Defence, New Delhi and Others**), the applicant submitted a representation dated 17.04.2014 vide Annexure A-6 to the Director General, National Water Development Agency, New Delhi, requesting to extend similar treatment and to revise his Grade Pay consequent upon granting the benefit of 2nd financial upgradation under the MACP Scheme, which came to be rejected by order dated 19th August, 2014 vide Annexure A-1. Being aggrieved by the action on the part of the respondents in not giving him the Grade Pay of Rs. 5400/- on extending the benefit of 2nd financial upgradation, the applicant presented the instant O.A seeking a declaration that the applicant is entitled to get the Grade Pay of Rs. 5400/- in Pay Band Rs. 15600-39100 (PB-3) on being granted the 2nd financial upgradation under the MACP Scheme vide order dated

10.06.2013 vide Annexure A-4 and for a direction to the respondents to grant the Grade Pay of Rs. 5400/- in Pay Band Rs. 15600-39100 (PB-3) on being granted the 2nd financial upgradation under the MACP Scheme. He further prayed for a direction to fix his pay as requested above and grant the arrears of difference of pay.

5. Pursuant to the notice of the O.A, the respondents entered appearance. Today, though the matter stands posted for reply of the respondents, the learned counsel for the respondents, Mr. B. Mishra, submits that in view of the recent judgement of the Hon'ble High Court of Delhi on the present issue and by applying the same, the O.A can be disposed of on the same lines.

6. By placing reliance upon the judgements of the Hon'ble High Court of Delhi dated 04.04.2011 in W.P.(C) No. 3420/2010 in the case of **R.S. Sengor & Others v. Union of India and Others** and dated 17.03.2015 in W.P.(C) No. 5082/2013 in the case of **Swaran Pal Singh and Others vs. Union of India and Others**, Shri B. Mishra submits that the applicant is not entitled for any relief as prayed for in the O.A and the O.A deserves to be dismissed.

7. Shri B.A. Vaishnav, learned counsel for the applicant is not a position to dispute the fact that the issue involved in this O.A has been considered by the Hon'ble High Court of Delhi in the two cases relied upon by Shri B. Mishra.

8. Perused the pleadings and the documents annexed thereto. Shri B.A. Vaishnav, learned counsel for the applicant argues that on extension of the benefit of 2nd financial upgradation under the MACP Scheme vide order dated 10.06.2013 (Annexure A-4), the respondents have fixed the Grade Pay of the applicant at Rs. 4800/- instead of Rs. 5400/-. Shri B.A. Vaishnav points out that the next

promotional post of Assistant Executive Engineer carries the Grade Pay of Rs. 5400/- in Pay Band Rs. 15600-39100 (PB-3) as such on granting the 2nd financial upgradation under the MACP Scheme, the Grade Pay shall be fixed at Rs. 5400/- and not at Rs. 4800/-. The respondents in their order dated 19.08.2014 rejected his claim by referring to the provisions of the MACP Scheme contained in Office Memorandum No. 35034/3/2008-Estt.(D) dated 19.05.2009. Shri B.A. Vaishnav by placing reliance upon the order of Chandigarh Bench of the Tribunal dated 31.05.2011 in O.A. No. 1038/CH/2010 (**Raj Pal vs. Union of India & Others**) and the orders of the Principal Bench of the Tribunal dated 26.11.2012 in O.A. No. 904/2012 (**Sanjay Kumar and Others vs. The Secretary Ministry of Defence, New Delhi and Others**), dated 08.09.2015 in O.A. No. 1586/2014 (**Vinai Kumar Srivastav and Another v. East Delhi Municipal Corporation, Delhi and Others**) and dated 11.09.2015 in O.A. No. 101/2015 (**Vikas Bhutani and Others v. Union of India and Others**) argues that the stand of the respondents for rejecting the claim of the applicant has been negatived in the said orders and as such the applicant is entitled for the reliefs as sought for in this O.A.

9. The grievance made by the applicant in this O.A is that he is entitled to the Grade Pay of Rs. 5400/- and highlighted the basis of his claim that his next promotional hierarchy of post is the Assistant Executive Engineer in the Pay Band of Rs. 15600-39100 with Grade Pay of Rs. 5400/-.

10. Shri B. Mishra , learned counsel for the respondents submits that the respondents have correctly granted the MACP benefit by upgrading the Grade Pay of Rs. 4600/- to Rs. 4800/-.

11. In view of the rival submissions of the learned counsel for the parties, the question that arises for our consideration is as under :

> "Whether the hierarchy contemplated by the MACP Scheme is in the immediately next higher Grade Pay or is it in the Grade Pay of the next above Pay Band."

12. Shri B. Mishra Learned counsel for the respondents points out that an identical question has been articulated by the Hon'ble High Court of Delhi in W.P.(C) No. 3420/2010, **R.S. Sengor & Others v. Union of India and Others,** decided on 04.04.2011. We have carefully gone through the said judgement. We notice that the Hon'ble High Court of Delhi in R.S. Sengor & Others v. Union of India and Others articulated identical issue and the same is at para 10 of the judgement. It reads as:

> 10. The question would be whether the hierarchy contemplated by the MACPS is in the immediately next higher Grade Pay or is it the Grade Pay of the next above Pay Band."

The above question is answered by the Hon'ble High Court of Delhi at para 11 of the said judgement, which reads as under :

> "11. Whatever may be the dispute which may be raised with reference to the language of paragraph 2 of the MACPS the illustration as per para 4 of Annexure I to the OM, contents whereof have been extracted hereinabove, make it clear that it is the next higher Grade Pay which has to be given and not the Grade Pay in the next hierarchical post and thus we agree with the respondents that Inspectors have to be given the Grade Pay after 10 years in sum of Rs. 4,800/- and not Rs. 5,400/- which is the Grade Pay of the next Pay Band and relatable to the next hierarchical post. To put it pithily, the MACPS Scheme requires the hierarchy of the Grade Pays to be adhered to and not the Grade Pay in the hierarchy of posts."

13. Shri B. Mishra further drew our attention to para 11 of a recent judgement dated 17.03.2015 in W.P.(C) No. 5082/2013, **Swaranpal Singh and Others v. Union of India and Others** on the file of the Hon'ble Delhi High Court by which the view in R.SSengor (supra) was reiterated. It reads as under :

"11. Questions that would essentially arise for determination in this case are whether the benefit under MACPS can be claimed to the pay band applicable to the next promotional post in the hierarchy on the ground of seniors getting lesser pay than their juniors who have availed such scale of the promotional post under the ACP Scheme; whether Section-II Part- A of the 1st Schedule to the Railway Services (Revised Pay) Rules, 2008 prescribe minimum pay and the petitioners by application thereof become entitled to stepping up of their pay in case their pay scales/Pay Band fixed in terms of Rule 7 is less than the minimum pay so prescribed."

On a careful reading of the judgement of the Hon'ble High Court of Delhi **Swaranpal Singh and Others v. Union of India and Others,** we find that the Hon'ble High Court answered the above question at para 19 of the said judgement, which reads as :

19. The grievance of the petitioners as made, is however, contrary to the fundamental concept on which MACPS introduced through the 6th Central Pay Commission operates. A bare reading of paragraph 2 of the MACPS would make it clear that it is the next higher Grade Pay which has to be given and not the Grade Pay in the next hierarchical post, as was available under the ACP Scheme with reference to the pay scale of the next above hierarchical post. It is not in dispute that MACPS supersedes ACP Scheme which was in force till August 31, 2008. Therefore, after August 31, 2008 any financial upgradation would be confined to placement in the immediate next higher grade pay in the hierarchy of the recommended revised Pay Band. The use of word 'merely' in para 2 of the Scheme supports this interpretation. Paragraph 2 further clarifies that the higher Grade Pay attached to the next promotional post in the hierarchy of the concerned cadre/organization will be given only at the time of regular promotion. Therefore, the claim that the petitioners should also be placed in the replacement Pay Band applicable to the next promotional post in the hierarchy as was available under the ACP Scheme is misplaced."

14. At para 20 of the said judgement, their Lordships were pleased to note that the very same issue had come up for consideration before this Court in W.P.(C) No. 3420/2010 in the case of **R.S. Sengor & Others v. Union of India and Others,** decided on 04.04.2011. Their Lordships quoted :

20. This very issue had come up for consideration before this Court in W.P. (C) No.3420/2010 R.S.Sengor & Ors. Vs. Union of India & Ors. decided on April 04, 2011.

In said case the petitioners were in Pay Band- 1 and had a corresponding grade pay of Rs. 1900/-. The next hierarchical post was also in Pay Band-1 but had a grade pay of Rs. 2400/-. The petitioners therein claimed that since the next hierarchical post had a pay band of Rs. 2400/-, they should, on financial upgradation, under the MACPS, be granted the grade pay of Rs. 2400/-. However, what the respondents in that case had done was to grant the petitioner therein the grade pay of Rs. 2000/- which was the next higher grade pay though, not the grade pay corresponding to the next hierarchical post. Dismissing the writ petition the Division Bench held as under:-

> "10. The question would be whether the hierarchy contemplated by the MACPS is in the immediately next higher Grade Pay or is it the Grade Pay of the next above Pay Band.
>
> 11. Whatever may be the dispute which may be raised with reference to the language of paragraph 2 of the MACPS the illustration as per para 4 of Annexure I to the OM, contents whereof have been extracted hereinabove, make it clear that it is the next higher Grade Pay which has to be given and not the Grade Pay in the next hierarchical post and thus we agree with the Respondents that Inspectors have to be given the Grade Pay after 10 years in sum of Rs. 4800/- and not Rs. 5400/- which is the Grade Pay of the next Pay Band and relatable to the next hierarchical post. To put it pithily, the MACPS Scheme requires the hierarchy of the Grade Pays to be adhered to and not the Grade Pay in the hierarchy of posts."

15. By referring to the fact that the view in R.S. Sengor was followed by another Division Bench of this Court in the decision reported as 193 (2012) DLT 577, **Union of India Vs. Delhi Nurses Union (Regd.) and Anr.**, at Para 22 of the said judgement, it was held as under :

> "22. Therefore, merely because others who have been granted financial upgradation in the pay scale of the promotional post in the hierarchy under the ACP Scheme and by operation of para 6 of MACPS, their pay is fixed with reference to the pay scale granted to them under the ACP Scheme, the petitioners would not get any right to be placed in such scales, since the language of the scheme makes it clear that the financial upgradation under ACP/MACPS are different than regular promotions in the grade."

The claim of the petitioners before the Hon'ble High Court of Delhi in R.S. Sengor and Others (supra) and Swaran Pal Singh and Others (supra) is identical to that of the claim of the applicant in this O.A , as such, in view of the findings of the Hon'ble High Court of Delhi on the issue at hand, one has to agree with the argument of Shri B. Mishra, learned counsel for the respondents.

16. Before agreeing with the argument of Shri B. Mishra, learned counsel for the respondents, it is necessary for us to deal with the argument of Shri B.A. Vaishnav, learned counsel for the applicant. As already observed, in support of the claim of the applicant, he places reliance upon the following orders :

(i) Order dated 31.05.2011 in O.A. No. 1038/CH/2010 in the case of Raj Pal vs. Union of India and Others on the file of Chandigarh Bench of the Tribunal;

(ii) Order dated 26.11.2012 in O.A. No. 904/2012 in the case of Sanjay Kumar vs. Union of India and Others on the file of Principal Bench of CAT, New Delhi;

(iii) Order dated 11.09.2015 in O.A. No. 101/2015 in the case of Vikas Bhutani and Others v. Union of India and Others on the file of Principal Bench of CAT, New Delhi;

(iv) Order dated 08.09.2015 in O.A. No. 1586/2014 in the case of Vinai Kumar Srivastav v. East Delhi Municipal Corporation and Others on the file of Principal Bench of CAT, New Delhi.

Shri B.A. Vaishnav also points out that the order of the Chandigarh Bench of this Tribunal in O.A. No. 1038/CH/2010 was subject matter before the Hon'ble Punjab and Haryana High Court in CWP No. 19387/2011 and the Hon'ble High Court of Punjab and Haryana confirmed the order passed in Raj Pal's case. He further points out that the SLP [(CC) 7467/2013] preferred against the order of Hon'ble High Court of Punjab and Haryana was dismissed by the Hon'ble Supreme Court by judgement dated 15.04.2013 and the matter has attained finality. He argues that in view of the fact that the judgement of the Hon'ble High Court of Punjab and Haryana was subject matter before the Hon'ble Supreme Court in the said SLP, which came

to be decided by the Hon'ble Supreme Court by judgement dated 15.04.2013, the submission of Shri B. Mishra cannot be entertained. The thrust of Shri B.A. Vaishnav is that the judgement of the Hon'ble High Court of Punjab and Haryana is to be preferred to that of the Hon'ble High Court of Delhi in view of dismissal of SLP. At this juncture, Shri B. Mishra brings to our notice that the order of Hon'ble Supreme Court in SLP [(CC) 7467/2013] is not on merits but on the ground of delay and laches. In this regard, we may also mention that an identical matter to that of Raj Pal (supra) was the subject matter before the Ernakulam Bench of the Tribunal in O.A. No. 816/2012 and the Hon'ble Tribunal allowed the same vide order dated 29.01.2013 by following the order of the Chandigarh Bench dated 31.05.2011 in O.A. No. 1038/CH/2010, affirmed by the Punjab and Haryana High Court in its judgement dated 19.10.2011 in CWP No. 19387/2011. The said order of the Ernakulam Bench in O.A. No. 816/2012 was challenged before the Hon'ble High Court of Kerala in OP (CAT) No. 2000 of 2013 which came to be confirmed vide its judgement dated 24.06.2013. The judgement of the Hon'ble High Court of Kerala in O.P. No. 2000/2013 was challenged by the Union of India before the Hon'ble Supreme Court in S.LP. (C) No. 21813/2014 [CC No. 10791 of 2014] and the Hon'ble Supreme Court by the order dated 08.08.2014 was pleased to stay the judgement of Hon'ble High Court of Kerala and the matter is still pending consideration of the Hon'ble Supreme Court. By referring to this fact Shri B. Mishra argues that it cannot be said that the Hon'ble Supreme Court laid down any law while dismissing the said SLP (CC) 7467/2013 by the judgement dated 15.04.2013. In other words, the order of the Hon'ble Supreme Court in SLP [(CC) 7467/2013] is not on the merits of the matter but is only on the ground of delay and laches. Hence what can be argued is that the judgement of the Hon'ble Supreme

Court in Raj Pal's case binds only to the parties to the same. It cannot be regarded/treated as a precedent. We are in agreement with the argument of Shri B. Mishra particularly in view of the fact that the Hon'ble Supreme Court was pleased to stay the judgement of the Kerala High Court in O.P. No. 2000/2013 and the matter is still pending.

17. Now the next question before us is that in view of the conflicting view of the Hon'ble High Court of Delhi and the Hon'ble High of Punjab and Haryana, we are in dilemma as to which of the judgements are to be preferred to that of another. Neither of the learned counsel is placing reliance upon any of the judgement of Hon'ble Gujarat High Court in support of their respective claims. To answer this problem, we may usefully refer to the Full Bench judgement of this Tribunal in O.A. No. 555/2001, **Dr. A.K. Dawar v. Union of India and Others,** on the file of the Principal Bench of this Tribunal. In Dr. A.K. Dawar, the Principal Bench was considering the situation arising out of conflicting decisions of Hon'ble High Court. It referred to the decisions in M/s East India Commercial C.o. Ltd., Calcutta and Another v. Collector of Customs, Calcutta, AIR 1962 SC 1893, Bhagaban Sarangi (supra) IPCL and Another v. Shramik Sena (2001) 7 SCC 469 and Director General (I&R) v. Holy Angels Schools, 1998 CTJ 129 (MRTPC). It held :

> "17. Consequently, we hold :-
>
> 1. that if there is a judgement of the High Court on the point having territorial jurisdiction over this Tribunal, it would be binding :
>
> 2. that if there is no decision of the High Court having territorial jurisdiction on the point involved but there is a decision of the High Court anywhere in India, this Tribunal would be bound by the decision of that High Court;
>
> 3. that if there are conflicting decisions of the High Courts including the High Court having the territorial jurisdiction, the decision of the Larger Bench would be binding, and

4. that if there are conflicting decisions of the High Courts including the one having territorial jurisdiction then following the ratio of the judgement in the case of Indian Petrochemicals Corporation Limited (supra), this Tribunal would be free to take its own view to accept the ruling of either of the High Courts rather than expressing third point of view."

Thus, in view of the decision of the Full Bench in Dr. A.K. Dawar (supra), by following the judgement in Indian Petrochemicals Corporation Limited (supra) we are free to take our own view to accept the rulings of either the Hon'ble High Court of Delhi and Hon'ble High Court of Punjab and Haryana. At this juncture, we may also observe that among the rulings relied upon by the parties, the judgement of Hon'ble High Court of Delhi in W.P.(C) No. 3420/2010 in the case of **R.S. Sengor & Others vs. Union of India and Others** is the oldest one, i.e. dated 04.04.2011. The order of the Chandigarh Bench of the Tribunal in the case of Raj Pal vs. Union of India and Others in O.A. No. 1038/CH/2010 was decided later. In other words, as on the date of decision of the Chandigarh Bench of the Tribunal in Raj Pal, the judgement of Hon'ble High Court of Delhi was very much available and if it refers to the issue involved in this O.A, then the judgement in Raj Pal is per incuriam. Hon'ble High Court of Punjab and Haryana did not refer to the judgement of Hon'ble High Court of Delhi in the case of R.S Sengor while dealing with the CWP No. 19387/2011 (supra). In view of this position and also in view of the guidelines of the Full Bench of the Tribunal (Principal Bench) in Dr. A.K. Dawar (supra), we accept the ruling of the Hon'ble High court of Delhi in R.S. Sengor (supra) which was consistently followed by it in Swaran Pal Singh (supra) and also in Union of India vs. Delhi Nurses Union (Regd.) and Another reported at 193 (2012) DLT 577. We may also observe that the Hon'ble Supreme Court in the case of **Government of Tamil Nadu vs. S. Arumugham & Ors.** held that the Courts cannot substitute their own views for the views of the Government or direct a new policy based on the

Court's view. Further, Hon'ble Supreme Court in the case of **Secretary, Govt. (NCT of Delhi) & Others v. Grade-I DASS Officers Association & Others**, 2014 (13) SCC 296, while considering ACP Scheme held that the scheme being a policy decision of the Government, the Court will not interfere with the same.

18. We have also carefully perused the Office Memorandum dated 19.05.2009 by which the Government has introduced the MACP Scheme. Paras 2, 8 and 8.1 of the MACP Scheme are relevant and they are noted as under :

> "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 I, 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/organization will be given only at the time of regular promotion.
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> 8. Promotions earned in the post carrying same grade pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of MACPS.
>
> 8.1 Consequent upon the implementation of Sixth CPC's recommendations, grade pay of Rs. 5,400/- is now in two pay bands viz., PB-2 and PB-3. The grade pay of Rs. 5,400/- in PB-2 and Rs. 5,400/- in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under MACP Scheme."

19. Annexure I to the DOPT OM dated 19.5.2009, vide illustration 4 clarifies as under:-

> "In case a Govt. servant joins as a direct recruits in the Grade Pay of Rs.1,900/- in Pay Band-I Rs. 5,200- 20,200/- and he gets no promotion till completion of 10 years of service, he will be granted financial upgradtaion under MACP scheme in the next higher Grade Pay of Rs. 2,000/- and his pay will be fixed by granting him one increment + difference of grade pay (i.e. Rs.100/-). After availing financial upgradation under MACP scheme, if the Govt. servant gets his regular promotion in the hierarchy of his cadre, which is to the Grade of Rs. 2,400/-, on regular promotion, he will only be granted the difference of Grade Pay of between Rs. 2,000/- and Rs. 2,400/-. No additional increment will be granted at this stage."

A combined reading of the above stipulations in the MACP Scheme would lead to a irresistible conclusion that it is the next higher Grade Pay which has to be given and not the Grade Pay in the hierarchical post and thus we agree with the respondents that the applicant has to be given the Grade Pay in a sum of Rs. 4800/- and not Rs. 5400/- which is the Grade Pay of the next Pay Band and relatable to the next hierarchical post.

20. In view of the foregoing, we do not find fault with the action on the part of the respondents in granting the Grade Pay of Rs. 4800/- while extending the benefit of 2nd financial upgradation under the MACP Scheme and consequently, the question of any direction as sought by the applicant does not arise. The O.A deserves to be dismissed. Accordingly, the same is dismissed with no order as to costs.

=Sd=
(K.N. SHRIVASTAVA)
ADMINISTRTIVE MEMBER

=Sd=
(M. NAGARAJAN)
JUDICIAL MEMBER

Cvr.

PREPARED BY 26/11/15

COMPARED BY

26/11/15

Section Officer (J)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
अहमदाबाद न्यायपीठ
Ahmedabad Bench