

(2025) 01 CAT CK 0020

Central Administrative Tribunal Cuttack Bench, Cuttack

Case No: Original Application No. 260, 00860 Of 2016

Shankar Patrao

APPELLANT

Vs

Revenue Secretary To
Government Of India, Ministry
Of Finance Department Of
Revenue, Central Board Of Excise
& Customs, North Block, New
Delhi - 110001 & Ors.

RESPONDENT

Date of Decision: Jan. 6, 2025

Hon'ble Judges: Sudhi Ranjan Mishra, Member (J); Pramod Kumar Das, Member (A)

Bench: Division Bench

Advocate: J.M. Patnaik, J.K. Nayak

Final Decision: Dismissed

Judgement

Pramod Kumar Das, Member (A)

1. The undisputed facts of the case are that on 22.03.1983 applicant joined as Inspector of Central Excise, Customs and Service Tax, Bhubaneswar.

On the recommendation of the 5th CPC, as a "Safety Net" to deal with the problem of genuine stagnation and hardship faced by the employees

due to lack of adequate promotional avenues, the Govt. of India vide memorandum dated August 9, 1999 introduced Assured Career Progression

(ACP) Scheme for granting two financial upgradations in case of no promotion at the interval of 12/24 years of regular service to an employee. The

ACP Scheme was made effective from 09.08.1999. Accordingly, the applicant was granted 1st ACP on 09.08.1999. Thereafter, he was promoted to

the post of Superintendent w.e.f. 23.09.2002 vide order dated 07.03.2003. He was granted 2nd financial upgradation under ACP w.e.f. 22.03.2007.

The ACP Scheme was replaced by Modified Assured Career Progression (MACP) Scheme providing therein three financial upgradation on interval of 10/20/30 years of regular service vide memorandum dated 01.09.2008.

2. Applicant was granted Non-Functional Grade Pay after completion of four years of regular service in the grade of Superintendent w.e.f.

07.03.2007 vide order dated 02.06.2010. Thereafter, he was granted 3rd MACP w.e.f. 22.03.2013. The 3rd MACP granted to the applicant was

withdrawn vide order dated 13.08.2014 with an order to recover the differential pay, against which, he submitted representations on various dates.

Thereafter, alleging non-consideration of his representations, he approached this Tribunal in OA 214/2016, which was disposed of on 19.04.2016.

Respondents considered the representation but rejected the same on the ground that as non-Functional Upgradation is counted towards MACP, the

applicant was not entitled for the 3rd MACP and since the same was erroneously granted to him, the same was rightly withdrawn. Applicant retired

from service on 30.06.2016 on reaching the age of superannuation. By filing the present OA, he has assailed the order of withdrawal of 3rd MACP

and rejection of his representation by stating that the grant of non-functional grade pay cannot be counted against MACP. In this regard, he has also

placed reliance on the decisions as under:

(i) K.C.Sharma Vs. UOI & Ors, 1998 (1) SLJ 54,

(ii) State of Punjab & Ors Vs. Rafiq Masih (White Washer), AIR 2015 SC 696;

(iii) Order of Honâ€™ble Delhi High Court in W.P.(C) No. 9357/2016 dated 20.12.2017 (Hariram & Ors Vs. Registrar General, Delhi High Court;

(iv) Order of Honâ€™ble High Court of Madras in W.P.No. 19024/2024 (R.Chandrasekaran Vs CAT)

(v) Order of CAT, PB, New Delhi in OA No. 3768/2018 dated 06.01.2022 (Ravi Dutt Shankar Vs. M/o Finance).

3. Respondents filed their counter contesting/opposing the case of the applicant stating therein that since non-functional upgradation is an upgradation

placing an employee in a higher grade pay, the same is countable as upward movement in pay scale. Thus, there was no stagnation. Hence, the 3rd

MACP granted to the applicant was rightly withdrawn.

4. In course of the hearing, Ld Counsel for the respondents to substantiate the stand taken by the respondents, has placed reliance on the decision as under:

1. Decision of the Hon'ble Supreme court passed in Civil Appeal NO-2016 OF 2020 dated 05.03.2020 in the case of UNION OF INDIA & OTHERS

VRS M.V/MOHANNAIR Reported in (2020) 5 SCC P-421-

2. Decision of the Hon'ble Supreme Court in Civil Appeal No-442 of 2022 dated 28.01.2022 (Directorate of Enforcement Vrs. K.Sudhesh Kumar).

3. Order of Ahmedabad Bench of CAT dated 25.01.2021 in the case of Jayesh Jadia and another Vrs union of India & others

4. Order of CAT Ernakulam Bench in OA No. 916 of 2016 dated 12.04.2019.

5. After considering the arguments, we have perused the records and decisions relied on by the respective parties. The sole question arises for

consideration of this Tribunal as to whether non-functional pay granted to the applicant to be counted towards financial upgradation towards MACP?

We find that the issue that arises for determination in this came up for consideration before Honâ€™ble Apex Court in a batch of cases titled Union

of India & Ors Vs. N.M.Raut & Ors .(arising out of SLP(C) NO. 8015 OF 2022). The Honâ€™ble Apex Court after taking into consideration the

decision of M.V.Mohannair (supra) and Rafiq Masih (supra), disposed of the matter vide order date 12.12.2024 with the observations and directions

as under:

â€œ13. A careful reading of the aforesaid clauses/provisions reflects the objective purpose of the MACPS, that is, that an employee should not remain

stagnant in the same pay scale/Grade Pay for periods of 10, 20 or 30 years. In such cases, the employee would be entitled to financial upgradation to

the immediate next higher Grade Pay, as mentioned in Section 1, Part-A of the first Schedule to the CCS RP Rules. Emphasis in clause 1 is on the

expression â€œGrade Payâ€. Clause 2, similarly, states that the benefit under the MACPS is available where the eligible employee has not got regular

promotion. In such cases, he/she will be given financial upgradation. However, such financial upgradation is not the same as a pay-scale/Grade Pay,

which is applicable to the next promotional post in the hierarchy of the concerned cadre/ organization.

14. Clause 5 states that the promotions earned/financial upgradations granted under the ACPS in the past shall be taken into account, but where there has been a merger of pay-scales/upgradation of posts recommended by the Sixth CPC, they shall be ignored for the purpose of granting upgradation under the MACPS. This has been explained by given examples A and B, which we have quoted above. At this stage, we would like to clarify that clause 5 will not be applicable to the cases in question. This is not a case of merger of pay-scales or upgradation of posts. On the other hand, this is a case wherein non-functional higher Grade Pay has been awarded to employees on completion of a certain length of service in the lower pay-scale/Grade Pay. We would, therefore, reject the contention of the respondents that, on implementation of the CCS RP Rules, upgrading the pay of Pharmacists and Superintendents, post the period of two or four years, would only amount to re-fixation of pay or revision of pay, as incorrect and, in essence, a wrong understanding of the CCS RP Rules.

15. Clause 6.2 specifically states that, where financial upgradation has been granted to the next higher pay-scale/Grade Pay in the hierarchy in the cadre as per the provisions of the ACPS, but as a result of the implementation of the Sixth CPC by grant of higher pay-scale/Grade Pay, the pay of such employees has been revised, such benefit will be given to the said employees. However, from the date of implementation of the MACPS, all financial upgradations would be done under the MACPS strictly in accordance with the hierarchy of the Grade Pay in the Pay Band, as notified vide CCS RP Rules. "Regular service" for the purpose of MACPS, commences from the date of joining the post in the direct entry grade on a regular service basis either on a direct recruitment basis or on an absorption/re-employment basis.

16. Clause 13 of the MACPS states that any time-bound promotion scheme, including in-situ promotion scheme, which is in force, may continue to be in operation for the concerned category of employees if it is decided by the concerned administrative authorities to retain such schemes. However, such schemes cannot run concurrently with the MACPS. The objective is clear. An incumbent eligible Government employee should not take the

benefit of both - the timebound promotion scheme or in-situ promotion scheme as well as the benefit of financial upgradation under the MACPS. We

have specifically referred to clause 13 for, in our opinion, the financial upgradation which is granted, after two or four years of service, to Pharmacists

or Superintendents, would indicate that they availed financial upgradation. In their cases, because of service conditions, the Government had thought it

proper to grant them such financial upgradation after they completed two or four years of service in the lower pay-scale/Grade Pay. It is not the

intention of the Government to ignore the said upgradation under the CCS RP Rules. If we do so, we would be granting them additional benefits

beyond what was envisaged and stated in the MACPS. The Revised Pay Rules, including a grant of financial benefits, and the MACPS are not two

watertight or separate compartments, each conferring independent benefits without reference to the other. Grant of financial upgradations as well as

promotions are to be duly accounted for and taken into consideration in the MACPS.

17. Clauses 19 and 20 specify that the financial upgradation is purely personal and has no relevance to the seniority position. Grade Pay/grant of

financial benefits shall not amount to actual or functional promotion of the employees concerned. Roster point etc. will not be applicable.

18. Clause 21 states that the pay drawn in the Pay Band and Grade Pay allowed under the MACPS shall be taken as the basis for determining the

terminal benefits in respect of the retiring employees.

19. The illustrations in Clause 28 clearly affirm the view we have taken and are in accord with what we have stated above.

20. In view of the aforesaid position of the MACPS, we fail to understand how we can ignore the financial upgradation, which was granted upon

completion of two or four years of service in the posts of Pharmacist or Superintendent, as the case may be, for the purpose of deciding as to whether

or not the Government employee would be entitled to the next financial benefit under the MACPS. To ignore the financial upgradation granted on

completion of two or four years of service as Pharmacists or Superintendents, would be contrary to the intent and purpose of the scheme, the

language employed as well as the examples/illustrations which have been given. No doubt, certain anomalies may arise because of the fact that the

ACPS and MACPS did operate during different periods; the nature of financial upgradations was different; and the time periods specified for financial upgradation were different, but this cannot be a ground and reason to re-write or ignore the expressed language of the MACPS and the intent and purpose behind the scheme. Read in this light, we have no difficulty in accepting the present appeal and setting aside the impugned judgments. Hence, we allow the present appeals.

21. In other words, the respondents would be entitled to the benefits of the MACPS only after taking into consideration all the financial upgradations earned by them, in terms of the CCS RP Rules. Financial upgradations under the said Rules have to be accounted for and will be treated as financial upgradations earned for the purpose of reckoning the 10-year intervals and the three assured financial upgradations, in terms of Grade Pay, under the MACPS.

22. We are informed that, in the present case, the Government of India had implemented and executed the MACPS by granting benefits to the respondents and, later on, recoveries were initiated. As many of the employees may have retired, in terms of the decision of this Court in *State of Punjab and Others vs. Rafiq Masih (White Washer) and Others*, we deem it appropriate to direct that the Union of India will not effect any recovery of arrears from the retirees or those who are retiring within one year from the date of pronouncement of this judgment.

23. In other cases, the recoveries may be made after issuing notice to the employee concerned, whose request for proportionate recovery over a period of time not exceeding two years, may be considered depending upon the quantum of recovery which is to be made. We also deem it appropriate to direct that the appellant, Union of India, will not charge interest on the amount to be recovered as they themselves had made the payment and, the issue being debatable, to ask the employees to pay interest at this distant point of time may lead to difficulty both in calculation as well as in payment.

24. However, it is clarified that the pension and the pay scale, which are payable shall be re-determined on the basis of this judgment and will apply prospectively with effect from 01.01.2025.

25. Where recoveries have been made from the retirees, the same shall be refunded. However, in the case of serving employees, where recoveries have been made, the same need not be refunded.

26. We also clarify that we have not made any comments or observations on any petition/appeal which is filed challenging the validity and legality of

Clause 8.1 of the MACPS.â€

6. In view of the law laid down by the Honâ€™ble Apex Court in the case of N.M.Raut (supra), the answer to the issued raised in this OA is

negative and goes in favour of the department. Hence, by applying the aforesaid decision, we are not inclined to interfere in the impugned order.

7. In the result, the OA stands dismissed by leaving the parties to bear their own costs.