GOVERNMENT OF INDIA/भारत सरकार
MINISTRY OF RAILWAYS/रेल मंत्रालय
(RAILWAY BOARD) रेलवे बोर्ड

No. PC-V/2021/CC/Judgements

New Delhi, dt.27.07.2021

The General Manager (P)
All Indian Railways / PUs

Sub: Sharing of information regarding favourable judgment.

Please refer to Board's letter No. PC-V/2009/ACP/2 dt. 10-06-2009 (RBE No. 101/2009) regarding grant of financial upgradation under MACP Scheme w.e.f. 01-9-2008. However, several Court Cases were filed seeking MACP benefit w.e.f. 01-01-2006. This issue finally stands adjudicated by Hon'ble Supreme Court of India vide their judgement in CA No. 1579 of 2021 (arising out of SLP © no. 15572 of 2019) filed by Shri R. K. Sharma & Ors. Vs UOI dt. 28-04-2021 (Copy enclosed) disposing a bunch of SLP(C)'s involving this issue. Hon'ble Court rejected the claim that MACPS should be applicable from 01-01-2006 observing that the benefits flowing from ACP & MACP Scheme are incentives and are not part of pay. DoP&T's O.M. No.35034/3/2015-Estt.(D), dated 13-07-2021 on the same issue is also enclosed.

2. It is advised that the aforementioned order of the Hon'ble Supreme Court may please be brought to the notice of all the concerned including the officials of the Divisions with instructions to ensure its effective utilisation while contesting the cases involving identical issue.

3. Please acknowledge the receipt of this letter.

DA: As above.

27/7/2021

(Sudha A Kujur)
Dy. Director, Pay Commission
Railway Board
Tele No. 011-47845121
Email ID : sudha.kujur@gov.in
1st Floor, Room No. 156/15

Copy to: FA & CAO's ; All India Railways / PUs

No.1-45011/06/2012/MACP/Estt- 427
Directorate General, ITBP
MHA(Govt of India)
Block-2, CGO Complex
Lodhi Road, New Delhi-110003

Date: /0 /05/2021

//Office Memorandum//

Sub: References/Representation/Court Cases for grant of financial benefits under MACP Scheme w.e.f 01.01.2006 instead of 01.09.2008-reg.

Please find enclosed herewith a copy of Judgment dated 28.04.2021 of the Hon'ble Supreme Court of India, on the subject cited above.

2. **The Hon'ble Supreme Court of India** vide Judgment dated 28.04.2021 has disposed of following SLPs(C), **wherein the Apex Court has refused to accept submission of the employee that MACPS should be made applicable w.e.f 01.01.2006 and set aside the judgment of the High Court. Also stated that benefits flowing from ACP & MACP Scheme are incentives and are not part of pay.**

(i) SLP(C) No. 1807 of 2021 titled UOI & Ors Vs Ranjeet Singh & Ors filed before the Hon'ble Supreme Court of India arising out of impugned final Judgment/Order dated 24.09.2019 passed by the Hon'ble Delhi High Court in WP(C) No. 13312 of 2018.

(ii) SLP(C) No. 11599 of 2020 titled UOI & Ors Vs Karamvir & Ors filed before the Hon'ble Supreme Court of India arising out of impugned final Judgment/Order dated 20.01.2020 passed by the Hon'ble Delhi High Court in WP(C) No. 868 of 2020.

(iii) SLP(C) No. 28112 of 2019 titled UOI & Ors Vs Chand Ram filed before the Hon'ble Supreme Court of India arising out of impugned final Judgment/Order dated 09.04.2019 passed by the Hon'ble Delhi High Court in WP(C) No. 7620 of 2018.

(iv) SLP(C) No. 15773 of 2020 titled UOI & Ors Vs Prakash Kumar & Ors filed before the Hon'ble Supreme Court of India arising out of impugned final Judgment/Order dated 11.12.2019 passed by the Hon'ble Delhi High Court in WP(C) No. 13051 of 2019.

(v) SLP(C) No. 11749 of 2020 titled UOI & Ors Vs Phool Kanwar & Ors filed before the Hon'ble Supreme Court of India arising out of impugned final Judgment/Order dated 11.02.2020 passed by the Hon'ble Delhi High Court in WP(C) No. 1527 of 2020.

3. Accordingly, all formations are requested to dispose of all pending grievances seeking MACP benefits w.e.f 01.01.2006 instead of 01.09.2008, and also to defend the various pending Court Cases or to take immediate suitable action for appealing against such judgments which are contrary to the existing policy.

4. For information and necessary action.

Encl: As above.

Asstt. Comdt(Office)
For Senior Administrative Officer(Estt)

To,

1. All Formations of ITBP.
2. NDRF units.

Copy to :-

1. PS to DG, ITBP (For kind information to DG please)
2. PS to ADG(HQ), Dte Genl, ITB Police.
3. PS to Inspectors General, Dte Genl, ITB Police.
4. All Branches of Dte Genl, ITB Police.
5. IT Cell Dte Genl- to upload this OM on ITBP website.

उप सेनानी (सूचना तकनीक) / Dy. Comdt. (IT Cell)
डायरी / Diary No. 382
दिनांक / Date 11/5/21

Asstt. Comdt(Office)
For Senior Administrative Officer(Estt)

GO(SDC/EDP)

32
30/4/21

ITEM NO.1502 Court 7 (Video Conferencing) SECTION XIV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s).1579/2021

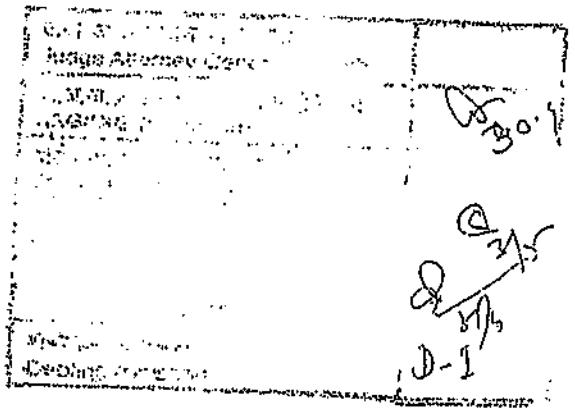
UNION OF INDIA & ORS. Appellant(s)

VERSUS

RK SHARMA & ORS. Respondent(s)

WITH
C.A. No. 1625-1627/2021 (XII)
C.A. No. 1644/2021 (III)
C.A. No. 1580/2021 (XIV-A)
C.A. No. 1603-1609/2021 (XIV-A)
C.A. No. 1616/2021 (XIV-A)
C.A. No. 1583/2021 (XIV-A)
C.A. No. 1615/2021 (XIV-A)
C.A. No. 1610/2021 (XIV-A)
C.A. No. 1611/2021 (XIV-A)
C.A. No. 1584/2021 (XIV-A)
C.A. No. 1601/2021 (XIV-A)
C.A. No. 1600/2021 (XIV-A)
C.A. No. 1585/2021 (XIV-A)
C.A. No. 1581/2021 (XIV-A)
C.A. No. 1582/2021 (XIV-A)
C.A. No. 1590/2021 (XIV-A)
C.A. No. 1588/2021 (XIV-A)
C.A. No. 1612/2021 (XIV-A)
C.A. No. 1586/2021 (XIV-A)
C.A. No. 1602/2021 (XIV-A)
C.A. No. 1595/2021 (XIV-A)
C.A. No. 1593/2021 (XIV-A)
C.A. No. 1594/2021 (XIV-A)
C.A. No. 1592/2021 (XIV-A)
C.A. No. 1613/2021 (XIV-A)
C.A. No. 1598/2021 (XIV-A)
C.A. No. 1591/2021 (XIV-A)
C.A. No. 1596/2021 (XIV-A)
C.A. No. 1597/2021 (XIV-A)
C.A. No. 1587/2021 (XIV-A)
C.A. No. 1589/2021 (XIV-A)
C.A. No. 1614/2021 (XIV-A)
C.A. No. 1599/2021 (XIV-A)

1022
3/5/21



Date : 28-04-2021 These appeals were called on for pronouncement of judgment today.

For Appellant(s) Ms. Madhavi Divan,ASG

Mr. Akshay Amritanshu,Adv.
Ms. Priyanka Das,Adv.
Ms. Rashmi Malhotra,Adv.
Mr. B. V. Balaram Das, AOR
Mr. Mukesh Kumar Maroria, AOR
Mr. Arvind Kumar Sharma, AOR

Ms. Sunita Sharma,Adv.
Ms. Deekasha,Adv.
Mrs. Anil Katiyar, AOR

For Respondent(s) Mr. Shaker Raju, Sr.Adv.
Mr. O.P.Aggrwal,Adv.
Ms. Manjeet Chawla, AOR

Ms. Mayuri Raghuvanshi, AOR
Mr. Santosh Kumar Pandey, AOR
Ms. Rupali Sharma, AOR
M/S. Unuc Legal Llp, AOR
Ms. Supriya Juneja, AOR

Mr. Manoj V.George,Adv.
Mr. Vignesh Ram,Adv.
Ms. Shilpa Liza George, AOR
Mr. Shifaz R.Dheen,Adv.
Ms. Bhavika,Adv.
Mr. Panmei,Adv.

Mr. Aravindh S., AOR
Mr. Yadav Narender Singh, AOR

Hon'ble Mr.Justice L.Nageswara Rao pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr.Justice Vineet Saran.

Civil Appeal No. 1601 of 2021 (@SLP (C) No.15773 of 2020) Prakash ku

Civil Appeal No. 1585 of 2021 (@SLP (C) No.11749 of 2020) Phool Kaur

Civil Appeal No. 1581 of 2021 (@SLP (C) No.11211 of 2020)

Civil Appeal No. 1582 of 2021(@SLP (C) No.11337 of 2020)

Civil Appeal No. 1590 of 2021 (@SLP (C) No.11939 of 2020)

Civil Appeal No. 1588 of 2021 (@SLP (C) No.11849 of 2020)

Civil Appeal No.1612 of 2021 (@SLP (C) No.1808 of 2021)

Civil Appeal No. 1586 of 2021 (@SLP (C) No.11776 of 2020)

Civil Appeal No. 1602 of 2021(@SLP (C) No.15774 of 2020)

Civil Appeal No. 1595 of 2021(@SLP (C) No.12123 of 2020)

Civil Appeal No. 1593 of 2021(@SLP (C) No.12035 of 2020)

Civil Appeal No.1594 of 2021(@SLP (C) No.12042 of 2020)

Civil Appeal No. 1613 of 2021 @SLP (C) No.1809 of 2021)

Civil Appeal No. 1598 of 2021 (@SLP (C) No.13074 of 2020)

Civil Appeal No. 1591 of 2021(@SLP (C) No.12021 of 2020)

Civil Appeal No.1596 of 2021(@SLP (C) No.12463 of 2020)

Civil Appeal No. 1587 of 2021(@SLP (C) No.11803 of 2020)

Civil Appeal No. 1589 of 2021 (@SLP (C) No.11903 of 2020)

Civil Appeal No. 1614 of 2021 (@SLP (C) No.1810 of 2021)

Civil Appeal No. 1579 of 2021 (@ SLP (C) No.15572 of 2019)

Civil Appeal No. 1583 of 2021 (@SLP (C) No.11599 of 2020)

Civil Appeal No. 1611 of 2021(@SLP (C) No.1807 of 2021)

Civil Appeal No. 1644 of 2021(@SLP (C) No.12665 of 2019)

Civil Appeal No. 1580 of 2021(@SLP (C) No.28112 of 2019)

Civil Appeal No. 1616 of 2021(@SLP (C) No.2068 of 2021)

Civil Appeal No. 1615 of 2021(@SLP (C) No.1811 of 2021)

Civil Appeal No. 1610 of 2021 (@SLP (C) No.1806 of 2021)

Civil Appeal No. 1584 of 2021(@SLP (C) No.11613 of 2020)

These appeals are allowed in terms of the signed non-reportable judgment.

Civil Appeal No.1592 of 2021 (@SLP (C) No.12033 of 2020)

Civil Appeal No. 1597 of 2021 (@SLP (C) No.12640 of 2020)

Civil Appeal No. 1600 of 2021 (@SLP (C) No.15772 of 2020)

Civil Appeal Nos. 1603-1609 of 2021 (@SLP (C) Nos.913-919 of 2021)
Civil Appeal No. 1599 of 2021 (@SLP (C) No.15150 of 2020)
and
Civil Appeal Nos.1625-1627/2021(@SLP(C)Nos.10811-10813/2018)

List these appeals for further hearing after ensuing summer vacation.

(B.Parvathi)
Court Master

(Anand Prakash)
Court Master

(Signed non-reportable judgment is placed on the file)

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 1579 of 2021
(@ SLP (C) No.15572 of 2019)

Union of India

.... Appellant(s)

Versus

R.K. Sharma & Ors.

.... Respondent (s)

WITH

Civil Appeal No. 1583 of 2021
(@SLP (C) No.11599 of 2020)

Civil Appeal No. 1611 of 2021
(@SLP (C) No.1807 of 2021)

Civil Appeal No. 1644 of 2021
(@SLP (C) No.12665 of 2019)

Civil Appeal No. 1580 of 2021
(@SLP (C) No.28112 of 2019)

Civil Appeal No. 1616 of 2021
(@SLP (C) No.2068 of 2021)

Civil Appeal No. 1615 of 2021
(@SLP (C) No.1811 of 2021)

Civil Appeal No. 1610 of 2021
(@SLP (C) No.1806 of 2021)

Civil Appeal No. 1584 of 2021
(@SLP (C) No.11613 of 2020)

Civil Appeal No. 1601 of 2021
(@SLP (C) No.15773 of 2020)

Civil Appeal No. 1585 of 2021
(@SLP (C) No.11749 of 2020)

Civil Appeal No. 1581 of 2021
(@SLP (C) No.11211 of 2020)

Civil Appeal No. 1582 of 2021
(@SLP (C) No.11337 of 2020)

Civil Appeal No. 1590 of 2021
(@SLP (C) No.11939 of 2020)

Civil Appeal No. 1588 of 2021
(@SLP (C) No.11849 of 2020)

Civil Appeal No.1612 of 2021
(@SLP (C) No.1808 of 2021)

Civil Appeal No. 1586 of 2021
(@SLP (C) No.11776 of 2020)

Civil Appeal No. 1602 of 2021
(@SLP (C) No.15774 of 2020)

Civil Appeal No. 1595 of 2021
(@SLP (C) No.12123 of 2020)

Civil Appeal No. 1593 of 2021
(@SLP (C) No.12035 of 2020)

Civil Appeal No.1594 of 2021
(@SLP (C) No.12042 of 2020)

Civil Appeal No. 1613 of 2021
(@SLP (C) No.1809 of 2021)

Civil Appeal No. 1598 of 2021
(@SLP (C) No.13074 of 2020)

Civil Appeal No. 1591 of 2021
(@SLP (C) No.12021 of 2020)

Civil Appeal No.1596 of 2021
(@SLP (C) No.12463 of 2020)

Civil Appeal No. 1587 of 2021
(@SLP (C) No.11803 of 2020)

Civil Appeal No. 1589 of 2021
(@SLP (C) No.11903 of 2020)

Civil Appeal No. 1614 of 2021
(@SLP (C) No.1810 of 2021)

J U D G M E N T

L. NAGESWARA RAO, J.

1. The short question that falls for consideration of this Court in these Appeals is whether the Government of India is justified in implementing the Modified Assured Career Progression Scheme (for short, 'MACPS') for civilian employees of the Central Government in Groups 'A', 'B', 'C', 'D' and officers in the All India Services, Chairpersons, Members of the Regulatory Bodies (except the Reserve Bank of India) with effect from 01.09.2008 and not from 01.01.2006. For the sake of convenience, we are referring to the facts of Civil Appeal arising out of SLP (C) No.15572 of 2019.

2. The Respondent was appointed as Deputy Director in the Bureau of Industrial Costs and Prices in Ministry of Industry, Department of Industrial Policy and Promotion which was subsequently merged with Tariff Commission. He was promoted as Director in grade pay of Rs.3700-125-4700-50-5000 by an order dated 09.02.1994. Certain recommendations were made by the 5th Central Pay Commission relating to the Assured Career Progression Scheme (for

short, 'ACPS') for Central Government civilian employees in all the Ministries/Departments which came into force w.e.f. 01.01.1996. Department of Personnel and Training by a memorandum dated 09.08.1999 directed implementation of the recommendations of the 5th Pay Commission regarding ACPS in respect of Group 'D', 'C' and 'B' officers and those holding isolated posts in Group 'A'. The relevant conditions that were laid down for grant of benefits under the ACPS are as under: -

1. *The ACP Scheme envisages merely placement in the higher pay-scale/grant of financial benefits (through financial upgradation) only to the Government servant concerned on personal basis and shall therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose.*

2. *The highest pay-scale upto which the financial upgradation under the Scheme was available was be Rs.14,300-18,300. Beyond this level, there shall be no financial upgradation and higher posts were filled strictly on vacancy based promotions.*

4. *The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second financial upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfillment of prescribed conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc. this would have consequential effect on the second upgradation which would also get deferred accordingly.*

5.1. Two financial upgradation under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in-situ promotion and fast-track promotions availed through limited Departmental Competitive Examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradation under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by the employee if an employee has already got one regular promotion he shall qualify for second financial upgradation only on completion of 24 years of regular service under the In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him.

In respect of Organized Group 'A' services, the Government has provided non-functional financial upgradation for the officers in PB-3 and PB-4 who are senior by two years or more to IAS officers (in particular grade) but have not so far been promoted to that particular grade because of lack of promotional avenues in Tariff Commission.

In respect of General Civil Service Group 'A' officers, whether holding isolated post or not {and also for Group 'B' & 'C' employees), the Government has provided financial upgradation by way of extending MACP to the officers who have not been promoted because of lack of upgradation whenever a person has spent 10 years continuously in the same grade. Further three upgradations after 10, 20 and 30 years of service are allowed.

(II) The scheme for financial upgradation to Organized Group 'A' services is being implemented for the first time. Similarly, the MACPs scheme will be applicable to him for the first time (he is

GCS Group 'A' officer holding a post which is not treated an isolated post, the earlier ACP scheme covered only those GCS Group 'A' officer who were on isolated posts).

3. The 6th Central Pay Commission submitted its report on 24th March, 2008 relating to the structure of emoluments, allowances, conditions of services and retirement benefits of the Central Government employees including those belonging to the Union Territories, Members of All India Services, personnel belonging to the Defence Forces, Officers and employees of the Audit and Accounts Departments and Chairpersons and Members of Regulatory Bodies, except the Reserve Bank of India. By a resolution dated 29th August, 2008, recommendations of the Central Pay Commission concerning civilian employees referred to above were accepted by the Central Government with respect to revised scales of pay and dearness allowances w.e.f. 01.01.2006. In so far as the revised allowances, other than the dearness allowance, the effective date according to the memorandum is 1st September, 2008.

4. The salient features of the MACPS recommended by the 6th Pay Commission are that three increments shall be granted to the employees on completion of 10, 20 and 30 years of service. According to the scheme of MACP, financial upgradation will be admissible on completion of 10 years of continuous service in the same grade pay.

5. On 21.08.2009, a representation was made by the Respondent pointing out the anomalies in the implementation of the MACPS. The grievance of the Respondent was that he was denied the benefit of the MACPS w.e.f. 01.01.2006. As the scheme was made applicable for officers of the organized group 'A' services w.e.f. 01.01.2006, the Respondent requested the Government to extend the benefit to him as well. He preferred another representation on 22.03.2012 reiterating his request made in the earlier representation. There was no response to the representations preferred by him seeking implementation of the MACPS w.e.f. 01.01.2006. Therefore, Respondent filed O.A. No.38 of 2014 in the Central Administrative Tribunal, Principal Bench, New Delhi. The Tribunal dismissed the O.A. filed by the Respondent by its judgment dated 21.02.2017 finding no merit in the claim of the Respondent for the financial upgradation under the MACPS to be granted w.e.f. 01.01.2006. The Respondent challenged the judgment of the Tribunal before the High Court of Delhi by filing Writ Petition No.4760 of 2018. The High Court allowed the Writ Petition and directed the Appellants to grant the second financial upgradation to the Respondent under the MACPS w.e.f. 01.01.2006 by relying upon a judgment of this Court in ***Union of India & Ors. v. Balbir Singh Turn & Anr[1].***

1 (2018) 11 SCC 99

6. Ms. Madhavi Diwan, learned Additional Solicitor General of India appearing for the Appellants submitted that this Court in ***Balbir Singh Turn*** (supra) held that payment under the ACPS is a part of the pay structure whereas in a later judgment in ***Union of India and Ors. v. M.V. Mohanan Nair***[2] this Court was of the opinion that both ACP and MACP schemes are in the nature of incentive schemes. These Appeals deserves to be dismissed in terms of the judgment of this Court in ***M.V. Mohanan Nair*** (supra). The contention of the Appellant is that a policy decision was taken to implement the recommendation of 5th Pay Commission in respect of revised scales of pay and dearness allowance for civilian employees w.e.f. 01.01.2006 and that revised allowance other than dearness allowance w.e.f. 1st September, 2008. The learned Additional Solicitor General argued that the Respondent is entitled to the incentive under ACP Scheme which was in vogue till 31.08.2008. The Respondent cannot seek applicability of MACPS w.e.f. 01.01.2006. According to the MACPS the financial upgradation is in the higher grade pay in the same pay band whereas financial upgradation as per ACP Scheme was to the next grade pay of promotional post. The learned Additional Solicitor General stated that revision of financial upgradation granted to civilian officers by implementing MACPS from 01.01.2006 would be

2 (2020) 5 SCC 421

detrimental to the Respondent and other similarly situated persons as huge amounts of money would have to be recovered from them.

7. For a better understanding of the dispute in these cases, it is necessary to examine the judgments of this Court in ***Balbir Singh Turn*** (supra) and ***M.V. Mohanan Nair*** (supra). The point that was considered by this Court in ***Balbir Singh Turn*** (supra) relates to the applicability of the benefit of MACPS from 01.01.2006. The Respondents therein approached the Armed Forces Tribunal which held that the benefit of ACP granted to an employee is part of the pay structure which affects the pay and also his pension. The Armed Forces Tribunal held that an ACP is not an allowance but a part of pay and therefore, in terms of the Government resolution, the employees were entitled for MACP w.e.f. 01.01.2006. This Court in ***Balbir Singh Turn*** (supra) upheld the said finding recorded by the Armed Forces Tribunal. Instructions issued on 30.05.2011 were found to be contrary to the resolution dated 30.08.2008 as, according to the resolution 01.01.2006 was the effective date for implementation of MACPS in matters relating to pay and dearness allowance.

8. In ***M.V. Mohanan Nair*** (supra) a three Judge Bench of this Court considered the ACPS as well as the MACPS to hold that the schemes are in the nature of incentive schemes which were brought into force to relieve stagnation. This Court was of the considered view that the Respondents therein were entitled only to the benefit of

next grade pay in the pay band and not to the benefit of grade pay of next promotional post. As the MACPS is a matter of Government policy pursuant to the recommendations made by the Pay Commission, this Court refused to accept submissions of the employees that MACPS should be made applicable w.e.f. 01.01.2006.

9. In view of the judgment of this Court in ***M.V. Mohanan Nair*** (supra), the Respondents and other similarly situated employees are entitled for financial upgradation under MACPS only to the next grade pay and not to the grade pay of next promotional post. It is clear from the resolution dated 30.08.2008 that the recommendation of the 6th Pay Commission was accepted by the Government and was made effective from 01.01.2006 in respect of civilian employees with regard to revised scales of pay and dearness allowances. In so far as the revised allowances other than dearness allowance, recommendation of the 6th Pay Commission were given effect from 01.09.2008. The judgment in ***M.V. Mohanan Nair*** (supra) clinches the issue. Benefits flowing from ACP & MACP Schemes are incentives and are not part of pay. The resolution dated 29.08.2008 is made effective from 01.09.2008 for implementation of allowances other than Pay and DA which includes financial upgradation under ACP & MACP Schemes. Therefore, the Respondents and other similarly situated officers are not entitled to seek implementation of the benefits of MACPS w.e.f. 01.01.2006 according to the resolution dated 29.08.2008. Moreover,

the implementation of MACPS by granting financial upgradation only to the next grade pay in the pay band and not granting pay of the next promotional post w.e.f. 01.01.2006 would be detrimental to a large number of employees, particularly those who have retired. We find force in the submission made by the learned Additional Solicitor General that uniform implementation of MACPS for civilian employees w.e.f. 01.01.2006 would result in large scale recoveries of amounts paid in excess.

10. In view of the above, we set aside the judgment of the High Court and allow these Appeals.

Civil Appeal No.1592 of 2021
(@SLP (C) No.12033 of 2020)
Civil Appeal No. 1597 of 2021
(@SLP (C) No.12640 of 2020)
Civil Appeal No. 1600 of 2021
(@SLP (C) No.15772 of 2020) - Khushi mohd.
Civil Appeal Nos. 1603-1609 of 2021
(@SLP (C) Nos.913-919 of 2021)
Civil Appeal No. 1599 of 2021
(@SLP (C) No.15150 of 2020)

11. Apart from the issue relating to the date from which MACP has to be given effect, other issues pertaining to the entitlement of the Respondents to claim benefit under the ACP Scheme in the next promotional post which is Sub-Inspector and not Assistant Sub-Inspector arise for consideration. List these Appeals for further hearing after summer vacation.

12. The dispute in this Appeal relates to the claim of the Respondents for payment of benefits under the ACP Scheme on completion of 24 years of service between January and April, 2009. List this matter for further hearing after summer vacation.

.....J.
[L. NAGESWARA RAO]

.....J.
[VINEET SARAN]

New Delhi,
April 28, 2021.

No.35034/3/2015-Estt.(D)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training
*****

North Block, New Delhi
Dated: 13th July, 2021.

OFFICE MEMORANDUM

Subject: **Cases pending or decided by Hon'ble High Courts/Central Administrative Tribunals regarding preponement of effective date of Modified Assured Career Progression Scheme – Order of the Hon'ble Supreme Court of India dated 28.4.2021 in CA No. 1579/21 (SLP (C) No. 15572/2019) of Union of India v/s R.K. Sharma & others - reg.**

The undersigned is directed to say that vide O.M. of even number dated 30.9.2020, Ministries/ Departments were advised to defend all cases or challenge the Orders of Court/Tribunal, as the case may be, which are contrary to Modified Assured Career Progression Scheme (MACPS) guidelines, since the matter relating to preponing the date of effect of the MACPS from 1.9.2008 (as provided in the scheme) to 1.1.2006, was sub-judice in a number of cases pending in the Apex Court, which have been tagged with SLP No. 10811-13/2018 of UoI v/s Ranjit Samuel, and that all similar matters were being heard together.

2. Though decision in the above mentioned cases is still awaited, the Hon'ble Supreme Court of India, in a related matter, has held that benefits under the MACPS cannot be claimed w.e.f. 1.1.2006. In its Order dated 28.4.2021 in Civil Appeal No. 1579/2021 [arising out of SLP (C) No. 15572/2019] of Union of India v/s R.K. Sharma & Others, the Hon'ble Apex Court has held as under:-

> " 7. *...For a better understanding of the dispute in these cases, it is necessary to examine the judgments of this Court in Balbir Singh Turn (supra) and M.V. Mohanan Nair (supra). The point that was considered by this Court in Balbir Singh Turn (supra) relates to the applicability of the benefit of MACPS from 01.01.2006. The Respondents therein approached the Armed Forces Tribunal which held that the benefit of ACP granted to an employee is part of the pay structure which affects the pay and also his pension. The Armed Forces Tribunal held that an ACP is not an allowance but a part of pay and therefore, in terms of the Government resolution, the employees were entitled for MACP w.e.f. 01.01.2006. This Court in Balbir Singh Turn (supra) upheld the said finding recorded by the Armed Forces Tribunal. Instructions issued on 30.05.2011 were found to be contrary to the resolution dated 30.08.2008 as, according to the resolution 01.01.2006 was the effective date for implementation of MACPS in matters relating to pay and dearness allowance.*
>
> *8. In M.V. Mohanan Nair (supra) a three Judge Bench of this Court considered the ACPS as well as the MACPS to hold that the schemes are in the nature of incentive schemes which were brought into force to relieve stagnation. This Court was of the considered view that the Respondents therein were entitled only to the benefit of next grade pay in the pay band and not to the benefit of grade pay of next promotional post. As the MACPS is a matter of Government policy pursuant to the recommendations made by the Pay Commission, this Court refused to accept submissions of the employees that MACPS should be made applicable w.e.f. 01.01.2006.*

...2/-

9. In view of the judgment of this Court in M.V. Mohanan Nair (supra), the Respondents and other similarly situated employees are entitled for financial upgradation under MACPS only to the next grade pay and not to the grade pay of next promotional post. It is clear from the resolution dated 30.08.2008 that the recommendation of the 6th Pay Commission was accepted by the Government and was made effective from 01.01.2006 in respect of civilian employees with regard to revised scales of pay and dearness allowances. In so far as the revised allowances other than dearness allowance, recommendation of the 6th Pay Commission were given effect from 01.09.2008. ***The judgment in M.V. Mohanan Nair (supra) clinches the issue. Benefits flowing from ACP & MACP Schemes are incentives and are not part of pay. The resolution dated 29.08.2008 is made effective from 01.09.2008 for implementation of allowances other than Pay and DA which includes financial upgradation under ACP & MACP Schemes. Therefore, the Respondents and other similarly situated officers are not entitled to seek implementation of the benefits of MACPS w.e.f. 01.01.2006 according to the resolution dated 29.08.2008. Moreover, the implementation of MACPS by granting financial upgradation only to the next grade pay in the pay band and not granting pay of the next promotional post w.e.f. 01.01.2006 would be detrimental to a large number of employees, particularly those who have retired. We find force in the submission made by the learned Additional Solicitor General that uniform implementation of MACPS for civilian employees w.e.f. 01.01.2006 would result in large scale recoveries of amounts paid in excess.***

10. In view of the above, we set aside the judgment of the High Court and allow these Appeals."

3. Accordingly, in terms of the existing MACP guidelines, and in light of above mentioned order dated 28.4.2021, all Ministries/Departments are, therefore, advised to dispose of all pending grievances seeking grant of benefit w.e.f. 1.1.2006 under the MACP Scheme, and also to defend the various pending Court Cases or to take immediate suitable action for appealing against such judgments which are contrary to the existing policy, as upheld by the Hon'ble Apex Court in the instant case.

(A. Bhattacharya)
Deputy Secretary

To
All Ministries/Departments of the Government of India.

Copy to :-

1. 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.
2. All attached/subordinate offices of the Ministry of Personnel, Public Grievances and Pensions.
3. Secretary, National Commission for Minorities.
4. Secretary, National Commission for Scheduled Castes/Scheduled Tribes.
5. Secretary, Staff Side, National Council (JCM), 13-C, Ferozeshah Road, New Delhi.
6. PS to MOS(PP) for information to Hon'ble MoS(PP).
7. All Staff Side Members of the National Council (JCM).
8. NIC [for uploading this OM on the website of DOPT (ACP)].
9. Hindi Section, DoPT for Hindi Translation.