*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**
\+   **<u>WRIT PETITION (CIVIL) No. 9109/2015</u>**

Reserved on: 25th May, 2016
%   **Date of Decision:** 16th August, 2016

UNION OF INDIA AND OTHERS ....Petitioners
Through Mr. R.V. Sinha, Advocate.

Versus

D.S. RAWAT AND OTHERS .....Respondents
Through Ms. Rekha Palli, Sr. Advocate with Ms. Sahila Lamba, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>SANJIV KHANNA, J.</u>

Union of India by this writ petition, impugns the order dated 11th March, 2015 passed in O.A. No. 3038/2013 whereby the Principal Bench of the Central Administrative Tribunal (Tribunal for short) has directed that the respondent Nos. 1 to 6 would be placed in Pay Band-3 in the Grade Pay of Rs.5400 with effect from 1st January, 2006 and that the respondent No. 7 would be entitled to the same grade pay and pay band with effect from 29th December, 2007. Further, on completion of 20 years of service on or after 1st September, 2008, the respondents would be entitled to the Grade Pay of Rs.6600 in PB-3 as the second financial upgradation under the Modified Assured Career Progression Scheme (MACP Scheme for short).

2. The respondents herein are employees, working in the Ministry of Communication and Information Technology. They were initially appointed to the post of Junior Engineer (Wireless). The respondent Nos. 1 to 7 were granted first financial upgradation under the Assured Career Progression Scheme (ACP Scheme for short), increasing/enhancing their salary as payable in the promotional post of the Junior Wireless Officer. Subsequently, the respondents Nos. 1 to 6 were promoted to the post of Junior Wireless Officer. The relevant details relating to appointment of respondent Nos. 1 to 7 to the post of Junior Engineer (Wireless), grant of the first financial upgradation under the ACP Scheme and promotion of respondent Nos. 1 to 6 to the post of Junior Wireless Officer have been reproduced below:-

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S. No.	**Name**	**Date of Appointment as Jr. Engineer (W)**	**Date of grant of 1st financial upgradation under ACP after 12 years service**	**Dt. of Promotion**
1	Sh. D.S. Rawat	12.5.1988	12.5.2000	16.2.2010
2	Sh. R.K. Yadav	10.5.1989	10.5.2001	16.2.2010
3	Shri B.P. Singh	17.4.1989	17.4.2001	16.2.2010
4	Sh. N. Srivastava	29.12.1987	29.12.1999	16.2.2010
5	Sh. Vinod Singh	03.2.1993	03.2.2005	19.8.2011
6	Smt. Leela	15.3.1993	15.3.2005	19.8.2011

	Kumari			
7	Sh. H.S. Dabas	29.12.1995	29.12.2007	---

"

3. As a result of the recommendations of the Sixth Pay Commission implemented with effect from 1st January, 2006, pay scale of Junior Engineer (Wireless) of Rs.5000-8000 and the next promotional post of Junior Wireless Officer of Rs.5500-9000 were merged in Pay Band-2, Rs.9300-34800 with the Grade Pay of Rs.4200.

4. The respondents thereupon asserted that with effect from 1st January, 2006, they were entitled to the pay scale of the next promotional post in the hierarchy of Engineer, i.e., Rs.8000-13500 in Pay Band-3 with Grade Pay of Rs.5400, relying upon clarification No. 27(iii) of the circular dated 1st April, 2011 issued by the Department of Personnel and Training. The representations were rejected vide order dated 9th January, 2013 relying upon clarification issued by DoP&T ID No. 75744/CR/12 dated 30th November, 2012 to the effect that clarification at point No. (iii) of question No. 27 in the circular dated 1st April, 2011 was applicable to cases where the government servants were promoted to the pay scale of Rs.5500-9000 prior to 1st January, 2006. The clarification would not be applicable in case of the respondents, for they were promoted after 1st January, 2006. The "ignoring factor" would be applicable only with effect from 1st September, 2008, i.e., the date on which the MACP Scheme became effective.

5. As noticed above, the tribunal has accepted the prayer of the respondents and rejected the submission of the petitioner. It has also

directed that the second financial upgradation under the MACP Scheme would be in Pay Band-3 with the Grade Pay of Rs.6600.

6. The undisputed factual position is that prior to 1st January, 2006, the hierarchy of posts in the cadre was:

Sr. No.	Name of the Post	Pay Scale
1.	Junior Engineer (Wireless)	Rs.5000-8000
2.	Junior Wireless Officer	Rs.5500-9000
3.	Engineer	Rs.8000-13500
4.	Engineer-in-Charge	Rs.10000-15600

To recall the factual matrix, the respondent Nos. 1 to 7 were granted the first financial upgradation on completion of 12 years of service under the ACP Scheme, and they became entitled to and were paid the pay scale of Rs.5500-9000 on different dates during the period from 12th May, 2000 till 29th December, 2007. On financial upgradation under the ACP Scheme, respondent Nos. 1 to 7 were granted the pay scale of the next promotional post in the hierarchy i.e., Junior Wireless Officer.

7. The Sixth Pay Commission recommendations were accepted by the Government of India on 1st September, 2008. However, benefit of revised pay scales etc. was effective from 1st January, 2006. The revised pay scale for the posts of Junior Engineer (wireless) and Junior Wireless Officer became identical from 1st January 2006. Thus, Junior Engineers (Wireless)

and Junior Wireless Officers were entitled to same pay, i.e., Pay Band-2, Rs.9300-34800 plus Grade Pay of Rs.4200. Consequently, the Junior Engineers (Wireless), who had not been granted the first financial upgradation and respondent Nos. 1 to 7 who were granted the first ACP on different dates between 12th May, 2000 and 29th December, 2007, were both entitled to the revised pay scale in Pay Band-2 of Rs.9300-34800 with Grade Pay of Rs.4200 with effect from 1st January, 2006. The grant of first financial upgradation under the ACP Scheme after 12 years of service became redundant or inconsequential in the case of the respondents.

8. In this context and to get over the aforesaid anomaly, the DoP&T had issued clarifications in the form of hypothetical situations and answers vide circular dated 1st April, 2011. Clarification No. 27 is relevant and we would, for the sake of convenience, like to reproduce it in entirety:-

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Sl. No.	Doubts	Clarification
27.	(i) In a hypothetical situation, cadre hierarchy was as follows: Rs.5000-8000 (revised GP 4200) Rs.5500-9000 (revised GP 4200) Rs.6500-10500 (revised GP Rs.4600) Rs.7,450-11,500 (revised GP Rs.4,600) Rs.10,000-15,200(revised GP	In terms of clarification given on point of Doubt No. 3 issued vide DoP&T's O.M. No. 35034/3/2008-Estt. (D), dated 9-9-2010, the benefits of ACPS would be applicable in the new pay structure adopted with effect from 1-1-2006 in the promotional hierarchy. (i) Since the pre-revised

	Rs.6,600) (i) What would be the 2nd financial upgradation under the ACPS for a Government employee recruited in the pre-revised pay scale of Rs.5,000-8,000, who has completed his 12 years of regular service on 12-4-2007 (between 1-1-2006 and 31-8-2008)?	pay scale Rs.5,000-8,000 and Rs.5,500-9,000 have been merged and placed in PB-2 with grade pay of Rs.4,200, 1st financial upgradation would be allowed in the grade pays of Rs.4600, subject to fulfillment of promotional norms as stipulated in Condition No. 6 of Annexure-1 ACPS, dated 9-8-1999, in terms of clarification given on point of Doubt No. 1 of ACPS dated 10-2-2000.
	(ii) What would be 2nd financial upgradation for employee recruited in Rs.5,000-8,000, who has completed 24 years of regular service on 12-4-2007 (between 1-1-2006 and 31-8-2008)?	Since the pre-revised pay scales Rs.6,500-10,500 and Rs.7,450-11,500 have been merged and placed in PB-2 with grade pay of Rs.4,600, 2nd financial upgradation would be allowed in the grade pay of Rs.6,600, subject to fulfillment of promotional norms (after framing of RRs post merger) as stipulated in Condition No. 6 of Annexure-1, ACPS, dated 9-8-1999, in terms of clarification given on point of Doubt No. 1 of ACPS, dated

		10-2-2000.
	(iii) If a Government servant recruited in the pre-revised pay scale of Rs.5,000-8,000 has been promoted in promotional hierarchy in the pre-revised pay scale of Rs.5,500-9,000 prior to 1-1-2006 (and he has put in 14 years of regular service), then would there be any claim for financial upgradation under ACPS?	(iii) The pre-revised pay scales Rs.5,000-8,000 and Rs.5,500-9,000 have been merged and placed in PB-2 with grade pays of Rs.4,200 with effect from 1-1-2006. Hence, the promotion would be ignored as he has completed his 12 years of regular service and the benefit of 1st ACP would accordingly be allowed in the promotional hierarchy i.e. in the grade pay of Rs.4,600 with effect from 1-1-2006.
	(iv) If the above Government servant had put in 22 years as on 31-8-2008, then what would be the entitlement in MACP?	(iv) As given above, the 1st ACP would be in PB-2 grade pay of Rs.4,600 after ignoring the previous promotion. Thereafter, since employee has completed more than 20 years of regular service on 1-9-2008, he would be entitled for 2nd financial upgradation under the MACPS in the immediate next higher grade pay of Rs.4,800 in PB-2 subject to fulfillment of condition as stipulated

		in Para 17 of Annexure-I of MACPS, dated 19-5-2009.

The aforesaid questions and answers deal with hypothetical situations, post implementation of the Sixth Pay Commission, as the pre-revised scales of Rs.5000-8000 and Rs.5500-9000 were merged in the Pay Band-2 with Grade Pay of Rs.4200. In situation (i) the DoP&T opined that on the merger of the pay scales, the Government servant on first financial upgradation would be entitled to the Grade Pay of Rs.4600. The response to hypothetical situation (iii) affirms that the government servant would be entitled to Grade Pay of Rs 4600. Reference in the answers to the Grade Pay of Rs.4600 is on the assumption that the Grade Pay of the next promotional post in the hierarchy, after the merger of the pre-revised scales of Rs.5000-8000 and Rs.5500-9000, would be Grade Pay of Rs.4600 in Pay Band-2. In the present case, the pay band and grade pay of the next promotional post in the hierarchy, i.e., Engineer, was Rs.8000-13500 (pre revised) or Pay Band-3 of Rs 9300-34800 with Grade Pay of Rs 5400 (revised post the Sixth Pay Commission).

9. We agree with the tribunal that on merger of the pay scales of Rs.5000-8000 and Rs.5500-9000 as a result of implementation of the Sixth Pay Commission with effect from 1st January, 2006, respondent Nos. 1 to 7 would be entitled to the the pay band and grade pay applicable to the next promotional post, i.e., the post of Engineer. The reason is obvious, that the pay scales of Junior Engineer (Wireless) and Junior Wireless Officer were merged and became one. In case we accept the argument of the petitioner,

it would have the effect of nullifying and taking away the benefit of the first financial upgradation. This was precisely the reason why the clarifications in response to the hypothetical situations in No. 27 were given.

10. As we have rejected the prayer of the petitioner on the said aspect, we would like to reproduce and deal with the reasoning given by the DoP&T in their communication dated 30th November, 2012. As per the said reasoning, the clarification at point No. 27(iii) was applicable where government servants were promoted from the pay scale of Rs.5000-8000 to Rs.5500-9000 prior to 1st January, 2006 and not where financial upgradation was granted on or after 1st January 2006. In the case of the government servants like the respondents, who were promoted post 1st January, 2006, they would not be entitled to the benefit of merger of the pre-revised pay scales of Rs.5000-8000 and Rs.5500-9000 with effect from 1st January, 2006 till 31st August 2008. This merger would be ignored only from 1st September, 2008, i.e., in other words, the benefit of the merger would only be available from 1st September 2008 onwards. It is difficult to understand the reason or logic behind the submission. In fact the submission is contrary to the clarification issued in response to the questions at serial No. 27 reproduced above. Once there was merger of pay scales of Rs.5000-8000 and Rs.5500-9000 with effect from 1st January, 2006, this merger cannot be ignored from the date of the merger itself and treated as relevant from a subsequent date, i.e., 1st September, 2008, the date on which the Pay Commission's recommendations were accepted. It would be incongruous and asymmetrical to deny benefit from 1st January, 2006 till 31st August, 2008, when the two earlier scales were merged

and arrears were paid with effect from 1st January, 2006. The true and correct effect would have to be given from the same date, i.e., 1st January, 2006 and not from a subsequent date. The retrospective effect is obvious and not restricted or curtailed.

11. Referring to the aforesaid contradiction apparent in the stand of the petitioner, we had vide order dated 22nd February, 2016 called upon the petitioner to ascertain and file an affidavit stating on oath the pay scale payable to a government employee if the employee had been granted financial upgradation between 1st January, 2006 and 31st August, 2008 under the ACP Scheme and why and for what reason an employee given the benefit of the ACP Scheme post 1st January, 2006 would not be entitled to the same pay scale. Response affidavit dated 1st April, 2016 has been filed, but it does not meet and answer the said questions. In the said affidavit, it has been stated as under:-

> "3. That it is stated that the pay scale payable to an employee if an employee was granted financial upgradation before the period 1st January 2006 till 31st August 2008 under the Assured Progression Scheme (ACPS) has been prescribed in the Clarification on point of doubt No. 3 of DOP&T O.M. dt. 09.9.2010 Annexure (A-I). It was indicated therein that the pay structure has been changed w.e.f. 1.1.2006, therefore, the previous ACPs would be applicable in the new pay structure adopted from 1.1.2006. Further ACP Scheme was in operation between 1.1.2006 to 31.8.2008. Financial upgradation in ACP Scheme were allowed in the promotional hierarchy as per the existing structure.

> 4. That it is also stated that promotion/ACPs from the post having pre-revised pay scale of Rs.5000-8000 to the post having pre-revised pay scale of Rs.5500-9000 (Both the pay scales have been placed in the Grade Pay of Rs.4200/-in the PB-2 consequent upon Sixth Central Pay Commission recommendations w.e.f. 1.1.2006) Annexure (A-2), will be protected till 29.8.2008. Therefore, financial upgradation under ACP/MACP Schemes could not be granted in the pay scale higher than what is admissible on promotion."

12. The answer to the query raised is to be found in the Office Memorandum dated 9th September, 2010. In response to the point of doubt at serial No. 3, it has been elucidated that the ACP Scheme would be applicable in the new pay structure adopted with effect from 1st January, 2006. The employee would be entitled to financial upgradation as payable in the normal promotional hierarchy. Clarification at Serial No. 3 is as under:-

"

Sr. No.	**Point of doubt**	**Clarification**
3.	How will the benefits of ACP be granted if due between 01.01.2006 and 31.08.2008?	The new MACPS has come into existence w.e.f. 01.09.2008. However, the pay structure has been changed w.e.f. 01.01.2006. Therefore the previous ACPS would be applicable in the new pay structure adopted w.e.f. 01.01.2006. Para 6.1 of Annexure-I of MACPS is only for exercising option for coming over to the revised pay structure and not for grant of benefits

		under MACPS. The following illustrations would explain the position.
		(A) (xx) (B) <u>In the case of normal promotional hierarchy</u> Date of appointment in entry Grade in the pre-revised pay scale of Rs.5500-9000: 01.10.1982 1st ACP granted on 09.08.1999: Rs.6500-10500 (pre-revised) 2nd ACP due on 01.10.2006 (as per the existing hierarchy): Rs 10000-15200 (pre-revised). Therefore, 2nd ACP would be in PB-3 with Grade Pay of Rs.6600 (in terms of hierarchy available). 3rd financial upgradation under MACPS would be due on 01.10.2012 in the immediate next higher grade pay in the hierarchy of recommended revised pay band and grade pay of Rs.7600.

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A reading of the aforesaid example would show that an employee in the pre-revised pay scale of Rs.6500-10500 is entitled to replacement pay in Pay Band-2 of Rs.9300-34800 with Grade Pay of Rs.4200. The next promotional post in the hierarchy as on 1st October, 2006, when the second ACP was due, was in the scale of Rs.10000-15200. On implementation of the Sixth Pay Commission with effect from 1st January, 2006, this pre-revised scale was placed in Pay Band-3 of Rs.15600-39100 with Grade Pay of Rs.6600. Thus, the officer would be entitled to the Grade Pay of Rs.6600 in PB -3 with effect from 1st October, 2006 when the second ACP was due. In case the employee was already entitled to the second ACP on or before 1st January, 2006, Grade Pay of Rs.6600 in PB-3 would have been paid from 1st January, 2006. The third financial upgradation under the MACP scheme would become applicable with effect from 1st December, 2012. The terms of the MACP Scheme and in particular paragraph/clause 8, has been examined hereinafter. Grade Pay of Rs 7600 under the MACP Scheme would be payable with effect from 1st October, 2012 being in the hierarchy of the recommended revised pay band and grade pay.

13. Before we close the discussion on the aforesaid issue, we must deal with another contention raised by the petitioner relying upon order dated 17th January, 2014 issued by the Ministry of Telecommunication and Information Technology. By this order, the competent authority had merged the post of Junior Engineer (Wireless) in pre-revised pay scales of Rs.5000-8000 (revised pay scale of Rs.9300-34800 with Grade Pay of Rs.4200) with the post of Junior Wireless Officer from pre-revised scale of Rs.5500-9000 (revised pay scale of Rs.9300-34800 with Grade Pay of

Rs.4200). Merger of the said two posts is inconsequential and not the determining factor for deciding the applicable pay scale. It is an accepted and admitted fact that even before the date of merger and with effect from 1st January, 2006, Junior Engineers (Wireless) were given the revised pay scale in PB-2 of Rs.9300-34800 with Grade Pay of Rs.4200, which was the pay scale also applicable to the next promotional post of Junior Wireless Officer. The situation would have different if the Junior Engineers (Wireless) had not been given the same pay scale as Junior Wireless Officers with effect from 1st January, 2006.

14. The aforesaid discussion deals with the grant of replacement pay scale after implementation of the Sixth Pay Commission with effect from 1st January, 2006 in the case of respondent Nos. 1 to 6 and in the case of the 7th respondent with effect from 29th December, 2007, when he became entitled to the first financial upgradation under the ACP Scheme.

15. The second issue, which arises for consideration, relates to the grant of financial benefit under the MACP Scheme on completion of 20 years of service on or after 1st September, 2008. The Tribunal, in the impugned order, has held that the respondents would be eligible for upgradation in the Grade Pay of Rs.6600 in PB-3. However, there is no discussion in the impugned order as to how and why the respondents would be entitled to the said grade pay under the MACP Scheme. In the O.A. filed by the respondents, they had relied upon decisions of the Central Administrative Tribunal, Chandigarh Bench dated 31st May, 2011 passed in OA.No.1038/CH/2010 titled ***Rajpal Vs. UOI*** and the decision dated 19th October, 2011 of the Punjab and Haryana High Court in Writ Petition

No.19387/2011 titled ***UOI & Ors. Vs. Raj Pal & Anr.***. The Delhi High Court dealing in ***R.S. Sengor & Ors. vs. Union of India & Ors.*** W.P.(C) 3420/2010 and ***Union of India vs. Delhi Nurses Union (Regd.) & Anr.,*** 193 (2012) Delhi Law Times 577 (DB) has not accepted and dissented from the ratio applied by the Punjab and Haryana High Court. The Delhi High Court decisions have highlighted the difference between the MACP and ACP Scheme. In ***R.S. Sengor & Ors.*** (supra) it has been observed :-

> "3. Relevant would it be to note that under the Assured Career Progression Scheme the financial up gradation was by way of fixation of the pay prescribed for the promotional post in the hierarchy.
>
> 4. With the implementation of the Pay Bands after the 6th Central Pay Commission made recommendations, various erstwhile pay scales were merged in a common Pay Band and a higher grade pay was given to the posts with onerous and higher responsibilities. The Assured Career Progression Scheme was replaced by the Modified Assured Career Progression Scheme (MACPS) as per DOPT OM dated 19.5.2009 which envisaged 3 financial up gradations, the first after 10 years of service, the second after 20 years of service and the third after 30 years of service.
>
> 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 ` 4,800/- and not ` 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."

Similarly, in ***Union of India vs. Delhi Nurses Union (Regd.) & Anr***., 193 (2012) Delhi Law Times 577 (DB), it was held:-

"7. ...the MACPS envisages the placement in the immediate next higher grade pay in the hierarchy of the recommended revised Pay Bands and grade pays as given in Section 1, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. It is also clear that the financial upgradation under the MACPS is purely personal to the employee and does not have any relevance to his seniority position. As such, there is also a possibility of a junior employee, who having got the benefit of financial upgradation, getting a higher pay/grade pay than a senior employee.

8. We may also point out that in paragraph 19 of the MACPS it has been categorically stated that the financial upgradation under the scheme amounts to mere placement on a personal basis in the immediate higher grade pay/grant of financial benefits only and does not amount to actual/functional promotion of the employee concerned. In other words, the question of promotion to the next hierarchical post is totally de-linked from the question of grant of financial upgradation.

18. Most importantly, this very issue had come up for consideration before this Court in the case of R.S.Sengor and Ors v. Union of India and Ors, in W.P.(C) 3420/2010 decided on 04.04.2011. In that case the petitioners were in Pay Band-1 and had a corresponding grade

pay of `1900/-. The next hierarchical post was also in Pay Band-1 but had a grade pay of `2400/-. The petitioners herein claimed that since the next hierarchical post had a pay band of `2400/-, they should, on financial upgradation, under the MACPS, be granted the grade pay of 2400/-. However, what the respondents in that case had done was to grant the petitioner therein the grade pay of `2000/- which was the next higher grade pay though, not the grade pay corresponding to the next hierarchical post. The Division Bench dismissed the petition of the writ petitioner therein and held: - Paras 10 and 11 (supra)."

16. MACP Scheme is distinct as it does not refer to the pay scale applicable to the next promotional post in the hierarchy and postulates grant of financial upgradation after 10, 20 and 30 years of service with reference to the next higher grade pay in the First Schedule Part A Section I of the Central Civil Services (Revised Pay) Rules 2008. Paragraph 8 of the MACPS Scheme reads:-

> 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.

Interpreting Paragraph 8 of the MACP Scheme in ***Govt. of NCT of Delhi vs S.K.Saraswat*** W.P. (C) 9266/2015 decided on 9th May, 2016 , this Bench had observed :-

> "19. It is equally possible to interpret Rule 8 as laying down the principle that promotions earned carrying the same pay-scales as mentioned in Section 1, Part-A of the First Schedule will be accounted for and counted. We would prefer and accept this interpretation for when we interpret paragraph 8, we must reflect

upon the context and objective of the Scheme and not read the said paragraph in isolation. Paragraph 8 is a homogenous part and parcel of the whole Scheme. We should compare the paragraph with the other paragraphs and the setting in which the paragraph occurs. The expression "same grade pay" would refer to the grade pay mentioned/given in Section 1, Part-A of the first schedule of the Rules. In other words, the promotions earned by a government servant in the grade pay given in the promotional hierarchy when identical to or the same as the grade pay in the hierarchy given in Section 1 , Part-A of the first schedule of the Rules would be counted for the purpose of the MACP Scheme. Thus, when a government servant had earned promotions in the past, we would have to refer to the grade pay mentioned in Section 1, Part-A of the first schedule of the Rules, before and post the said promotion. The corresponding increase given to a government servant on promotion in terms of financial upgradation of the grade pay would be counted for the purpose of the MACP Scheme. Three illustrations would make this position clear. In Pay Band-1 [Rs 5200-20200], the Grade Pay hierarchy is Rs 1800-1900-2000-2400-2800. Now three scenarios can be visualised. A government employee granted three promotions in the corresponding Grade Pay of Rs 1900, 2000 and 2400, would not be entitled to the benefit of MACP scheme. He has earned three promotions to posts carrying the same grade pay as per Section 1, Part-A of the first Schedule of the Rules. In the second situation, a government servant drawing a Pay Scale equal to Grade Pay of Rs 1800 on promotion draws a Grade Pay of Rs 2400. In other words, he skips Grade Pays of Rs 1900 and 2000. This is because pay grades in the promotional hierarchy are not identical and in progression as per Section 1, Part-A of the first Schedule of the Rules. This government servant would not be entitled to grant of another financial upgradation in terms of paragraph 8 of the MACP Scheme, as he had received three upgradations on being promoted and grant of the Grade Pay of Rs 2400. Skipped upgradations would be counted. In the third situation, a government servant is promoted, but in the same grade pay of Rs 1800. Notwithstanding the promotion as the grade pay remains the same, in terms of the MACP Scheme, the government employee would be entitled to financial upgradation to Grade Pay of Rs 1900 after 10 years, Rs 2000 after 20 years and Rs

2400 after 30 years. As per paragraph 8, promotion to the same grade pay is not counted.

20. In a given case, the promotional post may carry a grade pay higher than the grade pay in the hierarchy of the revised pay bands given in Section 1, Part-A of the first schedule of the Rules or carry the same grade pay. This is possible. The MACP Scheme refers to financial upgradations between two successive grades mentioned in the said schedule of the Rules and not to the next grade pay applicable and payable on regular promotion. Therefore, in case a government servant has earned promotion as a result of which his grade pay increased by two grades, say from Grade Pay Rs.1800 in Pay Band-I to Grade Pay of Rs.2400 in the same pay band ignoring the in-between Grade Pays of Rs 1900 and Rs.2000, then while computing or counting the financial upgradation for the purpose of MACP Scheme, the missed grade pay of Rs 1900 and Rs 2000 would be considered. The reason is that the said government servant had with promotion earned upgradation of Grade Pay from Rs.1800 to Rs. 2400, i.e., he had received financial upgradations of Grade Pay of Rs.1900 and 2000 to reach the scale of Rs.2400. Paragraph 8 seeks to negate the said benefit which a government servant gets, in view of the pay-scale applicable to the next higher promotional post. In such cases, benefit of MACP Scheme would be curtailed and computed accordingly. Equally the same principle would apply when the promotional post carries the same pay scale as the lower post in the feeder cadre. In such cases, in terms of paragraph 8, benefit under MACP Scheme with reference to immediate higher grade pay will apply. This would be just and fair, for financial upgradations would be equal across different organizations/cadres, when the MACP Scheme is applied. It will nullify and correct the ill affect when pay-scales in promotional posts are fixed contrary to the hierarchy of grade pay etc. mentioned in Section 1 , Part-A of the first schedule of the Rules. This will ensure equality and equal treatment of all government employees. This would also be in consonance with the concept that financial upgradation under the MACP Scheme is based upon the grade pay principle and not the grade pay applicable to the next higher promotional post."

17. In view of the aforesaid finding and ratio, we have no hesitation in setting aside the direction of the Tribunal that the respondents would be entitled to a third financial upgradation in the Grade Pay of Rs.6600. The reason is that the respondent Nos. 1 to 7, who were in the pre-revised pay scale of Rs.5000-8000/-, revised scale in Pay Band-2 of Rs.9300-34800 with Grade Pay of Rs.4200 on grant of Pay Band-3 of Rs.15600-39100 with Grade Pay of Rs.5400 have already been granted and have secured multiple financial upgradations from the Grade Pay of Rs.4200 to Rs.5400/-, by jumping over grade-pays of Rs.4600 and Rs.4800/- in the normal hierarchy as per the First Schedule, Part A, Section 1 of the Central Civil Service (Revised Pay) Rules 2008. Under the MACP Scheme the first financial upgradation would be in the Grade Pay of Rs.4600 and the second in the Grade Pay of Rs.4800 and the third in the Grade Pay Rs.5400. In fact, the respondents have gained multitudinous financial gradations as they have been directly taken to PB-3 Rs.15600-39100 with Grade Pay of Rs 5400, skipping and jumping over Pay Band-2 at Rs.9300-34800 with Grade Pays of Rs.4800 and Rs.5400/- respectively.

18. The Sixth Pay Commission had introduced a new pay scale at serial No. 17, of Group A entry level, in Pay Band-3 of Rs.15600-39100 with Grade Pay of Rs.5400. The relevant portion of Schedule 1 of the Central Civil Service (Revised Pay) Rules, 2008 in this regard reads as under:-

"

Present Scale			**Revised Pay Structure**		
Sl.	**Post/Grade**	**Present**	**Name of**	**Corresponding**	**Corresponding**

No.		Scale	Pay Band/Scale	Pay Bands/Scales	Grade Pay
16	S-15	8000-275-13500	PB-2	9300-34800	5400
17	New Scale	8000-275-13500 (Group A Entry)	PB-3	15600-39100	5400

"

In the impugned order passed by the Tribunal, it has not been noticed that Pay Band-3 of Rs.15600-39100 with Grade Pay of Rs.5400 was a new scale introduced by the Sixth Pay Commission for which the replacement pay scale was in PB-2, Rs.9300-34800 with Grade Pay of Rs.5400. Paragraph 8.1 of the MACP Scheme deals with the newly introduced pay scale and explains its operation:-

> 8.1 Consequent upon the implementation of Sixth CPC's recommendations, Grade pay of Rs. 5400 is now in two pay bands viz., PB-2 and PB-3. The grade pay of Rs. 5400 in PB-2 and Rs.5400 in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under MACP Scheme.

Thus, in terms of paragraph 8.1 of the MACP Scheme, the new scale at Serial No.17 is to be considered financial upgradation from the scale at Serial No.16, though the two have and carry the same Grade Pay of Rs 5400.

19. In light of the aforesaid, we partly allow the present writ petition filed by the Union of India. We uphold the order of the Tribunal granting Pay Band-3 with Grade Pay of Rs.5400 with effect from 1st January, 2006 in the case of the respondent Nos. 1 to 6 and in the case of the 7th respondent with effect from 29th December, 2007. However, the direction given by the tribunal with regard to grant of second financial upgradation in the Grade Pay of Rs.6600 in Pay Band-3 is set aside. In the facts of the case, there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(NAJMI WAZIRI)
JUDGE

AUGUST 16th, 2016
VKR /ssn