IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED : 12.01.2022

PRONOUNCED : 16.02.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.4318 of 2017

1. B.Moorthi
2. P.Elumalai
3. S.A.Mathiyalagan
4. T.Syed Mubarak Jan
5. R.Elumalai
6. P.Alex
7. V.V.Vijaya Kumar
8. A.Rasool
9. C.V.Devadas
10. V.Anandan
11. T.K.Balan
12. V.Arjunan
13. S.Ravi
14. K.K.Suresh Babu
15. G.Devaraji
16. K.Ismayil
17. Hari Om Singh
18. Rajpal Singh
19. K.B.Nath
20. Ram Kishan
21. Narendra Singh
22. Vinod Chander Pandy
23. Munna Swamy
24. A.A.Khan
25. GyanChand
26. Premchandra P.R.
27. Harikumar
28. Panalal Yadav
29. Nitai Bauri
30. Sulaiman Khan
31. R.Krishnamurthy
32. B.Ramesh
33. C.N.Raghu ... Petitioners

vs.

1. The Union of India,
   Represented by its Secretary to the Government,
   Department of Home Affairs,
   New Delhi.

2. The Director General of Police,
   Dte.Genl., CRPF, CGO Complex,
   Lodhi Road,
   New Delhi-110 003.

3. The Inspector General of Police,
   Rapid Action Force, CRPF,
   R.K.Puram,
   New Delhi-110 066.

4. The Inspector General of Police,
   Southern Sector, CRPF,
   Road No. 10 C, Jubilee Hills,
   Near MLA/MPs Colony,
   Gayathri Hills,
   Hyderabad-500 033.

5. The Dy. Inspector General of Police,
   Range-II, Rapid Action Force, CRPF,
   Kendria Sadan, C-Wing, 4th Floor,
   CBD Belapur,
   Navi Mumbai-410 614.

6. The Dy. Inspector General of Police,
   Legal Branch, GC, CRPF,
   Avadi, Chennai-600 065.

7. The Commandant,
   99 RAF/CRPF,
   Hakimpet,
   Secunderabad.

8. The Commandant,
   229 Battalion, CRPF,
   B.R.O Complex,
   Bijapur-494 444
   Chattisgarh.

9. The Commandant,
   100 RAF/CRPF,
   Vastral,
   Ahmedabad,
   Gujarat-382 418.

10. The Commandant,
105 BN, RAF/CRPF,
Mahalingapuram, Vellalore,
Coimbatore-641 111. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for the records relating to the proceedings No.J.II.02/2017-105-EC-II dated 11.03.2017 on the file of 10th respondent and in proceedings No.P.1-1/2017-100-IC-SR dated 20.03.2017 on the file of the 9th respondent and in Proceedings No.P.VII-I/2017-229-EC-I dated 20.03.2017 on the file of the 8th respondent and in Proceeding No.P.VII-7/2017-EC-I dated 30.03.2017 on the file of the 7th respondent and quash the same in so far as the petitioners concerned and directing the respondents to take action for granting 3rd financial up-gradation with the grade pay Rs.4600/- from the date of completion of 30 years of service to the petitioners at par with their batch mates under modified assured career progression scheme.

(Prayer amended as per order dated 29/01/2018 by VPNJ in WMP.NO 348/2018 IN WP.NO 4318/2017)

For Petitioners : M/S.R.Meenakshi

For Respondents : Mr.M.Soundar Vijay
Additional Central Government
Standing Counsel

O R D E R

This Writ Petition has been filed for the issuance of Writ of Certiorarified Mandamus to call for the records relating to the:-

a. Proceedings dated 11.03.2017 bearing reference. No.J.II.02/2017-105-EC-II on the file of the 10th respondent.

b. Proceedings No.P.1-1/2017-100-IC-SR dated 20.03.2017 on the file of the 9th respondent.

c. Proceeding bearing reference No.P.VII-1/2017-299-EC-I dated 20.03.2017 on the file of the 8th respondent.

d. Proceedings bearing Reference No.P.VII-7/2017-EC-I dated 30.03.2017 on the file of the 7th respondent

> and to quash these impugned orders, insofar as the petitioners are concerned and to direct the respondent to take action for granting 3rd financial upgradation with the grade pay of Rs.4600/- from the date of completion of 30 years of service to the petitioners on par with his batchmates under modified assured Career Progression Scheme.

2. This Writ Petition was originally filed by the petitioners for issuance of a Writ of Mandamus to direct the respondents to take action for granting 3rd financial upgradation with a Grade Pay of Rs.4600/- to the petitioner from the date of their completion of 30 years of service on par with their batch mates under Modified Assured Career Progression Scheme (MACPS).

3. By an interim order dated 21.02.2017, this Court had ordered as follows:-

> i. It is the claim of the petitioners that they should be granted the 3rd financial upgradation with the grade pay of Rs.4600/- from the date of completion of 30 years of service on par with their batchmates.
>
> ii. A perusal of the typed set of papers would indicate that as per the Office Note dated 21.07.2016 made in No.P.VIII-8/2016-105-C-I, the said request has been rejected.
>
> iii. The grievance expressed by the learned counsel for the petitioner is that despite the said rejection, the same has not been communicated to the petitioners and therefore, the petitioners are constrained to file the present writ petition for issuance of Manadamus.
>
> iv. In the light of the facts and circumstances, the 10th respondent is directed to communicate the decision as to the rejection of the request insofar as the petitioners are concerned, within a period of one week from the date of receipt of a copy of the order and upon receipt of the same, it is open to the petitioners to file appropriate petitioner seeking for amendment of the prayer and to raise

additional grounds. Call the matter on 21.03.2017.

4. After the aforesaid interim order was passed, the seventh to tenth respondents have passed the following the impugned orders:-

i. 10th respondent – Proceedings No.J.II.02/2017-105-EC-II dated 11.03.2017.

ii. 9th respondent – Proceedings No.P.I-I/2017-100-IC-SR dated 20.03.2017.

iii. 8th respondent – Proceedings No.P.VII-1/2017-299-EC-I, dated 20.03.2017.

iv. 7th respondent – Proceedings No.PVII-7/2017-EC-I dated 31.03.2017.

5. The petitioners therefore filed W.M.P.No.348 of 2018 to amend the prayer in the present writ petition. By an order dated 29.01.2018, this Court allowed W.M.P.No.348 of 2018. The amended prayer thus reads as under:-

> "Writ of Certiorarified Mandamus calling for the records relating to the Proceedigns No.J.II.02/2017-105-EC-II dated 11.03.2017 on the file of the tenth respondent and the Proceedings No.P.I-I/2017-100-IC-SR dated 20.03.2017 on the file of the ninth respondent and the Proceedings No.P.VII-1/2017-229-EC-1 dated 20.03.2017 on the file of the eighth respondent and Proceedings No.P.VII-7/2017-EC-I, dated 31.03.2017 on the file of the seventh respondent."

6. By these orders, the respondents have rejected the prayer of the petitioners for the 3rd financial upgradation with a grade ay of Rs.4600/- from the date of completion of service on par with the petitioners batchmates who were earlier promoted as Sub-Inspector of Police.

7. The case of the petitioners is that they were appointed as Constable (General Duty) in the year 1985 and were later promoted as Head Constable on 01.10.1996.

8. It is further case of the petitioners that they were promoted as Sub-Inspector of Police (GD) only in the year 2014 after they were promoted as Assistant Sub Inspector (GD) of Police whereas about 644 were other persons from their batch

were earlier promoted directly as Sub-Inspector of Police in 2011 and were a grade pay of Rs.4200/- and later when they were promoted as Inspector of Police they were given a grade pay of Rs.4,600/- .

9. It is submitted that since the petitioners were not promoted for want of vacancy directly as Sub-Inspector in the year 2011 the petitioners were promoted as Assistant Sub-Inspector (GD) with a Grade Pay of Rs.2800 in 2012. It is submitted therefore submitted that when the petitioners were promoted as Inspector they were given a grade pay of Rs.4200/- and therefore by not giving them the grade pay of Rs.4600/-, the respondent had discriminated the petitioners with their batchmatches.

10. The case of the petitioners is that not only the petitioner's contemporary but also juniors have been given the benefit of higher grade pay under the Modified Assured Career Progression (ACP) Scheme announced in 2008. It is submitted that the petitioners Juniors are also getting higher salary than the petitioners .

11. In this connection, the learned counsel for the petitioner has placed reliance on the decision of the Delhi High Court in Sathish Kumar and Others Vs. Union of India and Others in W.A.No.1716 of 2020 vide its order dated 14.02.2020 wherein paragraph 5, the Court disposed the case with the following directions:-

> i. The petitioners will be granted the benefit of 1st financial upgradation under the ACP Scheme from 9th August, 1999 for contemplating 12 years of regular service in the pay scale of SI;
>
> ii. The petitioners will be granted the benefit of 2nd financial upgradation under the MACP Scheme from 1st January, 2006 for completing 20 years of regular service in the pay scale of Inspector;
>
> iii. The appropriate orders will be issued and arrears will be paid to the petitioners within a period of 12 weeks, failing which the respondents will be liable to pay simple interest at 6% per annum on the arrears for the period of delay."

12. The learned counsel for the petitioners further drew

attention to an order dated 28.04.2021 of the Hon'ble Supreme Court in Union of India and OrsVs.R.K.Sharma and Ors (2021) 5 SCC 579 which disposed the Civil Appeal arising out of SLP filed by the Union of India wherein it was held that the resolution dated 29.08.2008 as made applicable from 01.01.2006 for implementation of Modified Assured Career Progression Scheme (MACP) would be detrimental to a large number of employees as it would result in large scale recoveries of the amounts paid in excess.

13. It is submitted that while implementing the order of the Hon'ble Supreme Court dated 05.03.2020 in C.A.No.2016 of 2020 arising out of S.L.P.No.21803 of 2014 in the case of Union of India and Ors Vs. M.V.Mohanan Nair(2020)5SCC421, the respondents have issued guidelines so that the benefit of Modified Assured Career Progression Scheme was to be given with effect from 01.01.2006 instead of 01.09.2008 and not in the next promotional hierarchy.

14. Defending the stand of the respondent, the learned counsel for the respondent submits that the petitioners were promoted as Head Constable (General Duty) with a Grade Pay of Rs.2400, 2nd financial upgradation in MACP or as ASI(GD) Grade Pay of Rs.2800 and the 3rd promotion (SI General Duty) with a Grade Pay of Rs.4200/- within the 30 years of service.Therefore, the petitioners cannot have any grievance.

15. It is submitted that as per the DOPT OM No.35034/3/2008-Estt,(D) dated 19.05.2009, the petitioners were not eligible for grant of 1st to 3rd financial up-gradation under MACPS(Modified Assured career Progression Scheme) introduced with effect from 01.09.2008.

16. It is admissible only to Government Servants who were having clear service record in the next higher grade pay on completion of 10/20 and 30 years of service where they were not granted promotions within 10/20/30 years of service respectively.

17. The learned counsel for the respondent further placed reliance to the decisionof the Delhi High Court rendered in W.P.No.8515 of 2014 vide order dated 09.11.2016, wherein it was observed as follows:-

> "…13. Paragraphs 1 and 2 of the Scheme postulate grant of three financial upgradations after ten years of service, as per the pay band and grade pay as given in Section 1, Part A to the First Schedule. Once an employee has got the benefit of time-bound promotion or in-situ promotion and has got the higher pay scale, the same has to be

counted for the purpose of financial upgradation under the MACP Scheme."

18. The learned counsel for the respondents further submits that the Hon'ble Supreme Court in the case of Union of India and OrsVs.R.K.Sharma and Ors(2021) 5 SCC 579 [Civil Appeal No.1579 of 2021 dated 28.04.2021] has observed as under:-

> "28. The object behind the MACP Scheme is to provide relief against the stagnation. If the arguments of the respondents are to be accepted, they would be entitled to be paid in accordance with the grade pay offered to a promotee; but yet not assume the responsibilities of a promotee. As submitted on behalf of Union of India, if the employees are entitled to enjoy Grade Pay in the next promotional hierarchy, without the commensurate responsibilities as a matter of routine, it would have an adverse impact on the efficiency of administration.
>
> 29. The change in policy brought about by suppression of ACP Scheme with the MACP Scheme is after consideration of all the disparities and the representations of the employees. The Sixth Central Pay Commission is an expert body which has comprehensively examined all the issues and the representations as also the issue of stagnation and at the same time to promote efficiency in the functioning of the departments. MACP Scheme has been introduced o the recommendation of the Sixth Central Pay Commission which has been accepted by the Government of India. After accepting the recommendation of the Sixth Central Pay Commission, the ACP Scheme was withdrawn and the same was superseded by the MACP Scheme with effect from 01.09.2008. This is not some random exercise which is unilaterally done by the Government, rather, it is based on the opinion of the experty body – Sixth Central Pay Commission which has examined all the issues, various representations and disparities. Before making the recommendation for the Pay Scale/Revised Pay Scale, the Pay Commission takes into consideration the existing pay structure, the representations of the government servants and various other factors after which the recommendations are made. When the expert body like Pay Commission has comprehensively

> examined all the issues and representations and also took note of inter-departmental disparities owing to varying promotional hierarchies, the Court should not interfere with the recommendations of the expert body. When the government has accepted the recommendation of the Pay Commission and has also implemented those, any interference by the Court would have a serious impact on the public exchequer.
>
> 51. The ACP Scheme which is now superseded by MACP Scheme is a matter of government policy. Interference with the recommendations of the expert body like Pay Commission and its recommendations for the MACP, would have serious impact on the public exchequer. The recommendations of the Pay Commission for MACP Scheme has been accepted by the Government and implemented. There is nothing to show that the Scheme is arbitrary or unjust warranting interference. Without considering the advantages in the MACP Scheme, the High Courts erred in interfering with the Government's policy in accepting the recommendations of the Sixth Central Pay Commission by simply placing reliance upon Raj Pal's case. The impugned orders cannot be sustained and are liable to be set aside."

19. The learned counsel for the respondent further submitted that the Hon'ble Supreme Court in Union of India and Ors Vs. R.K.Sharma and Ors, (2021) 5 SCC 579, revisited the objects on implementation of MACP's recommended by 6th Pay Commission and increments have been granted on completion of 10 years, 20 years and 30 years of service respectively.

20. The learned counsel for the respondent therefore submits that since the petitioners were promoted as Head Constable and thereafter Assistant Sub-Inspector ASI(GD) and later as Sub-Inspector (GD) and conferred financial benefits both under ACPS/MACPS based on the ranks held there is no merits in the present writ petition and it is liable to be dismissed.

21. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Central Government Standing Counsel appearing for the respondents. I have perused the impugned orders and the decisions cited during the hearing.

22. A reading of the facts indicates that these petitioners

have got their third upgradation under MACP with a Grade Pay of Rs.4,200/-. Some of them have got it when they were promoted as Sub-Inspector (GD) while others serving as Assistant Sub-Inspector of Police (GD).

23. This increase in the grade pay was the 3rd incentive which is the maximum financial incentive/upgradation that can be granted under MACP.

24. The third incentive of Rs.4,200/- as grade pay has been given to them in their promotional post of Sub-Inspector of Police(GD) and Assistant Sub-Inspector of Police(GD) on completion of 30 years.

25. As far as the facts of the present case are concerned, they are not in dispute. Facts on record indicate that an earlier attempt of the petitioners turned futile. The requests of the petitioners were rejected vide Office Order No.P.VIII-8/2018-EC-(105) MACP dated 30.03.201. This is evident from a reading of paragraph 2 of order dated 21.07.2016 bearing reference No.P.VIII-8/2016-105-CI which reads as under:

> "2. In this connection, it is intimated that, their request for sanction of 3rd financial up-gradation under MACP scheme in the Grade Pay of Rs.4600 was not considered vide this office order No.P.VII-8/2016-EC-I(105) MACP dated 30.03.2016. But, they now submitted representations along with few copy of office orders of other units/pay slip of personnel of other units and claimed that these personnel were also enlisted in CRPF during 1985, but allowed 3rd financial up-gradation under MACP scheme in the Grade Pay of Rs.4600/-
>
> 3. The case has been re-examined in this branch with their service books, relevant instructions and clarifications issued by the Dte., Genl. on the matter. As per GOI, Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) OM No.35034/3/2008.Estt (D) dated 19.05.2009, three financial up-gradations under the MCAP at intervals of 10,20 and 30 years of continuous regular service is to be granted to Government employees. The concept of MACP scheme is that, financial up-gradations is to be granted to the personnel on completion of 10/20/30 years in lieu of three regular promotions.Whereas above personnel mentioned in

Sl.No.1 to 18 have already earned their three regular promotions within 30 years of service.In this regard, the DIGP (Estt) Dtevide Signal No.P.VII-52/2015-Estt (P/Cell)-DA-1 dated 04.08.2015 has issued the following clarification:-

> "As per para 28(c) of GOI, O.M.No.35034/3/2008.Estt(D) dated 19.05.2009 it has been clarified vide this Dte. Sig of even No. dated 27.02.2015 that if a Govt. servant has been granted either two regular promotions or 2nd financial up-gradation under ACP scheme of August,1999 after completion of 24 years regular service then only 3rd financial up-gradation would be admissible to him under MACP scheme on completion of 30 years regular service, provided that he has not earned 3rd promotion in hierarchy. That means those who got either two regular promotions or granted 2nd ACP before 30 years of service are eligible for 3rd MACP in the next higher grade pay on completion of 30 years regular service and hence, a SI/GD who earned 2nd promotions as SI within 30 years of service will be eligible for 3rd MACP in the grade pay of Rs.4600/- after completion of 30 years of regular service. In view of above, a Govt. servant who earned 2nd promotion as SI within 30 years of service is eligible 3rd MACP".

4. In the above clarification it has been made clear that, a SI/GD who earned 2nd promotion as SI within 30 years of service will be eligible for 3rd MACP in the grade pay of Rs.4600/- on completion of 30 years of regular service. Whereas, above Sis/GD (Sl.No.1 to 16) have earned 03 regular promotions within 30 years of service i.e., 1st promotion as HC/GD, 2nd promotion as ASI/GD and 3rd promotion as SI/GD and also sanctioned 1st ACP with Grade Pay @ 2400/-, 2nd MACP with Grade Pay @ 2800/- and pay granted/fixed in the regular promotion as SI @ Grade Pay @ Rs.4200/-. Similarly, ASIs/GD

mentioned at Sl.No.17 & 18 have also earned 02 regular promotions in the rank of HC/GD and ASI/GD and they have already been sanctioned 3rd MACP with Grade Pay @ Rs.4200/-. As such above personnel are not eligible for 3rd financial up-gradation under MACP scheme in the Grade Pay of Rs.4600/- on completion of 30 years regular service. The affected personnel be informed accordingly.

26. The petitioners therefore submitted a fresh representation which has given raise to the present writ petition.The petitioners were appointed as Constables (GD) with the respondents CRPF in the year 1985. They were later promoted as Head Constables (GD) during the year 1996 after completing 10 years of service.

27. Meanwhile, the 5th Pay Commission was implemented with effect from 01-01-1996. Pursuant to the recommendation of the 5th Pay Commission, the Assured Career Progression (ACP) was announced with certain modification. The salient features of ACP are as follows:

a. "It envisaged placement in the higher pay scale/grant of financial benefits (through financial upgradation) 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.

b. 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.

c. 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."

28. The Modified Assured Career Progression Scheme (MACPS) was later announced by the Central Government for the Central Government Civilian Employees after the announcement of the VI Pay Commission. MACPSwas accepted by the Central Government based on the recommendation of the 6^{th} Pay Commission with few modifications.

29. The said Scheme was operational with effect from 01.09.2008. It envisages grant of three financial upgradation to Group A, Group B and Group C employees on completion of 10, 20 and 30 years of continuous regular service.

30. In 2008 Central Civil Services (Revised Pay) Rules 2008 came into force with effect from 01.07.2006 vide G.S.R.No.622(e) dated 25.08.2008.

31. Annexure I to Official Memorandum dated 19.05.2009 which gives out the details of modified Assured Career Progression Scheme (MACPS) for Central Government Civilian Employees reads as follows:-

> 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 1, 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.

32. After implementation of MACP, two financial upgradations will be granted to the next higher grade pays in pay band PB-2.The Illustration and Explanation therein are re-produced below:-

> The pre-revised hierarchy (in ascending order) in a particular organization was as under:-
> Rs.5000-8000, Rs.5500-9000 & Rs.6500-10500.
>
> (a) A Government servant who was recruited in the hierarchy in the pre-revised pay scale Rs.5000-8000 and who did not get a promotion even after 25 years of service prior to 1.1.2006, in his case as on

1.1.2006 he would have got two financial upgradations under ACP to the next grades in the hierarchy of his organization, i.e. to the re-revised scales of Rs.5500-9000 and Rs.6500-10500.

(b) Another Government servant recruited in the same hierarchy in the pre-revised scale of Rs.5000-8000 has also completed about 25 years of service, but he got two promotions to the next higher grades of Rs.5500-9000 & Rs.6500-10500 during this period.

In the case of both (a) and (b) above, the promotions/financial upgradations granted under ACP to the pre-revised scales of Rs.5500-9000 and Rs.6500-10500 prior to 1.1.2006 will be ignored on account of merger of the pre-revised scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 recommended by the Sixth CPC. As per CCS (RP) Rules, both of them will be granted grade pay of Rs.4200 in the pay band PB-2. After the implementation of MACPS, two financial upgradations will be granted both in the case of (a) and (b) above to the next higher grade pay of Rs.4600 and Rs.4800 in the pay band PB-2.

33. This exercise has not been done, if the above method was followed the petitioners would have got the their 2nd upgradation of Rs.4,200/- as the grade pay instead of Rs.2,800/-Thus, there is no merits in the position taken by the respondents Nos.7,8,9 & 10 in the impugned Orders/communication.

34. In M.V.Mohanan Nair Vs Union Of India and Others (2020) 5 SCC 421, the Hon’ble Supreme Court observed that the ACP & MACP schemes are in the nature of incentive schemes which were brought into force to relieve stagnation. The court was of the 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.

35. The Court also observed that MACP Scheme is a matter of Government policy pursuant to the recommendations made by the Pay Commission. The Hon’ble Supreme Court refused to accept submissions of the employees that MACPS should be made applicable w.e.f. 01.01.2006. Few paragraphs from the said judgment of the Hon’ble Supreme Court which are relevant are reproduced below:-

“29. As pointed out earlier, both ACP and MACP

Schemes are in the nature of incentive schemes devised with the object of ensuring that the employees who are unable to avail of adequate promotional opportunities, get some relief from stagnation in the form of financial benefits. Under the MACP Scheme, financial upgradations are granted at three regular intervals on completion of 10-20-30 years of service without promotion. Hence, it is also intended to ensure that the employees are adequately incentivised to work efficiently despite not getting promotion for want of promotional avenue. The change in policy brought about by supersession of the ACP Scheme with the MACP Scheme is after well-deliberated and well-documented recommendations of the Sixth Central Pay Commission. Considering the various issues in the implementation of the ACP Scheme, the Pay Commission expressed its views "the only other way is to bring systematic changes in the existing Scheme of ACP so that all the employees irrespective of the existing hierarchy structure in their organisations/cadres, get some benefit under it". The Commission therefore, recommended that the existing scheme of ACP be continued with the modifications indicated thereon in the report that the financial upgradation has to be in the next immediate grade pay. One of the reasons for the expert body recommending the MACP Scheme was that there were inter-departmental disparities where several departments had varying promotional hierarchies. As a result, the working of ACP Scheme under which an employee who stagnated for 12 years, was entitled to pay in the pay scale of the next promotional post, led to inter-departmental anomalies. The Pay Commission therefore, recommended MACP Scheme with a view to putting an end to the problem ensuing from inter-departmental disparities"

36. The Hon'ble Supreme Court further observed as under :-

"30. The learned Amicus Curiae and the learned counsel appearing for the respondents urged the Court to adopt a "purposive interpretation" that the words "immediate next higher grade pay" to be interpreted as "Grade pay of the next promotional post" in the hierarchy. MACP Scheme envisages merely placement in the immediate next higher grade pay. By perusal of the MACP Scheme extracted earlier, it is seen that the words used in the Scheme are "placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands". The term "grade pay in the next promotional post" is conspicuously absent in the entire body of the MACP Scheme. The argument of the respondents that the benefit of MACP Scheme is referable to the promotional post, is dehors the MACP Scheme and cannot be accepted. Though ACP and MACP Schemes are intended to provide relief against stagnation, both the schemes have different features. Pay scales under the Sixth Pay Commission and the MACP Scheme are stated to be more beneficial since it extends to the employees with time intervals with higher pay bands and various facilities which were not available under the ACP Scheme including the three financial upgradations in shorter time span. In any event, MACP Scheme has not been challenged by the respondents. As rightly contended by the learned ASG, the respondents cannot be permitted to cherry-pick beneficial features from the erstwhile ACP Scheme and also take advantage of the beneficial features in the MACP Scheme.

31. The object behind the MACP Scheme is to provide relief against the stagnation. If the arguments of the respondents are to be accepted, they would be entitled to be paid in accordance with the grade pay offered to a promotee; but yet not assume the responsibilities of a promotee. As submitted on behalf of Union of India, if the employees are entitled to enjoy grade pay in the next promotional hierarchy, without the commensurate responsibilities as a matter of routine, it would have an adverse impact on the efficiency of administration.

32. The change in policy brought about by supersession of ACP Scheme with the MACP Scheme is after consideration of all the disparities and the representations of the employees. The Sixth Central Pay Commission is an expert body which has comprehensively examined all the issues and the representations as also the issue of stagnation and at the same time to promote efficiency in the functioning of the

departments. MACP Scheme has been introduced on the recommendation of the Sixth Central Pay Commission which has been accepted by the Government of India. After accepting the recommendation of the Sixth Central Pay Commission, the ACP Scheme was withdrawn and the same was superseded by the MACP Scheme with effect from 1-9-2008. This is not some random exercise which is unilaterally done by the Government, rather, it is based on the opinion of the expert body — Sixth Central Pay Commission which has examined all the issues, various representations and disparities. Before making the recommendation for the pay scale/revised pay scale, the Pay Commission takes into consideration the existing pay structure, the representations of the government servants and various other factors after which the recommendations are made. When the expert body like the Pay Commission has comprehensively examined all the issues and representations and also took note of inter-departmental disparities owing to varying promotional hierarchies, the Court should not interfere with the recommendations of the expert body. When the Government has accepted the recommendation of the Pay Commission and has also implemented those, any interference by the Court would have a serious impact on the public exchequer.

56. The ACP Scheme which is now superseded by MACP Scheme is a matter of government policy. Interference with the recommendations of the expert body like the Pay Commission and its recommendations for the MACP Scheme, would have serious impact on the public exchequer. The recommendations of the Pay Commission for MACP Scheme has been accepted by the Government and implemented. There is nothing to show that the Scheme is arbitrary or unjust warranting interference. Without considering the advantages in the MACP Scheme, the High Courts erred in interfering with the Government's policy in accepting the recommendations of the Sixth Central Pay Commission by simply placing reliance upon Raj Pal case [Union of India v. Raj Pal, 2011 SCC OnLine P&H 14580] . The impugned orders [Union of India v. M.V. Mohanan Nair, 2013 SCC OnLine Ker 11713] ' [Union of India v. Reeta Devi, CWP No. 24278 of 2013,

> order dated 7-11-2013 (P&H)] ' [Union of India v. Rajini Kanta Deka, 2014 SCC OnLineMegh 269] ' [Union of India v. M. Swarnalatha, 2016 SCC OnLineHyd 746] ' [Nagendra Pati Tripathy v. Union of India, 2016 SCC OnLine Pat 4799] ' [Union of India v. G.V.S.S. Anand, 2016 SCC OnLineHyd 745] cannot be sustained and are liable to be set aside.

37. In R.K.Sharma Vs Union of India(2021) 5 SCC 579, the Court held as under:-

> "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 allowances, 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.”

38. Recently, the principle in M.V.Mohanan Nair Vs Union Of India and Others(2020) 5 SCC 421 was reiterated in The Director, Directorate of Enforcement Vs K.Sudheesh Kumar &Ors, reported in (2022 SCC OnLine SC 101) vide its Order dated 22.1.2022 in Civil Appeal No.442 of 2022.

39. The Hon’ble Supreme Court held that under the MACP Scheme employees are entitled to the immediate next higher grade pay as given in Section 1, Part A of the First Schedule of the CCS (Revised Pay) Rules, 2008. The Court further held that MACP has nothing to do with the next promotional post and what the employee would be entitled would be the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in the CCS (Revised Pay) Rules, 2008.

40. When MACP was implemented with effect from 01.09.2008, the petitioners had about 23 years of service.They would have not got their second upgradation under ACP. They were still serving as Head Constables (GD).

41. Before promotion from the post of Head Constable, all these persons would have been under similar pay scales. They would have got their first upgradation under ACP pursuant to the 5th Pay Commission with effect from 01.01.1996. Those persons who were appointed with the petitioner and was promoted earlier as Sub-Inspector (GD) in 2011 also would have got their first upgradation under ACP.

42. In 2011, the respondents approved panel for promoting the Head Constables (GD) to the post of Sub Inspectors (GD) on 07.07.2011. It apparently consisted of 1239 names which according to the petitioner included their names also.

43. Of 1239 person, only 632 persons (excluding the petitioners) were promoted as Sub-Inspector(GD)from the aforesaid panel on 21.10.2011 and later promoted as Inspector of Police.

44. The names of the petitioners were removed from the above panel and were brought in the Special Approved List AA/GD on 01.02.2012 prepared for promoting them as Assistant Sub Inspector (GD).

45. This was during their 27th year of Service and they were given a grade pay of Rs.2800/- as 2nd upgradation. This is the first instance of discrimination between those who were directly promoted as SI in 2011 and those persons like the petitioners

who were promoted as Assistant Sub Inspector (GD) in 2011.

46. All these petitioners who had completed 20 years of services should have got their 2^{nd} upgradation under the MACP with a grade pay of Rs.4200/- along with others. It is not clear why the 2^{nd} upgradation was delayed when indeed it should have been given to them then and there.

47. But for the delayed promotions of the petitioner as Assistant Sub Inspector and the promotion of 632 person were who were promoted as Sub Inspector of Police in 2011, all the1239 person should have been given the same benefit under the Modified Assured Career Progression Scheme (MACPS) with a grade pay of Rs.4200/-

48. Some of the petitioners were thereafter promoted as Sub Inspector (GD) in the year 2014 during the 29^{th} year of their service with a grade pay of Rs.4,200/-, while some of the petitioners have earned 03 promotions within 30 years of service i.e., 1^{st} promotion as Head Constable (GD) under ACP, 2^{nd} promotion as Assistant Sub-Inspector ASI(GD) and 3^{rd} promotion as Sub-Inspector (GD) under MACP and also sanctioned 1^{st} ACP with Grade Pay @ 2400/-, 2^{nd} upgradation with Grade Pay @ 2800/- and 3^{rd} MACP with a Grade Pay @ Rs.4200/-.

49. While some of the petitioners have earned 02 regular promotions in the rank of HC(GD) and ASI(GD) and they have already 3^{rd} upgradation with Grade Pay @ Rs.4200/-.

50. The petitioners whose promotion were delayed and were promoted as Assistant Sub-Inspector of Police (GD) were given a grade pay of Rs.2,800/- whereas those person who were promoted in 2011 as Sub Inspector (GD)got their 2^{nd} upgradation with a grade pay of Rs.4,200/-

51. This variance arises on account of promotion in 2011 of 632 personsas Sub Inspector of Police (GD) in 2011 and petitioners as Assistant Sub Inspector of Police (GD) the grade pay on promotion pursuant to Official Memorandum dated 13.09.2008 by referring F.No.1/1/2008-IC, Government of India, Ministry of Finance, Department of Export.

52. The Delhi High Court in the case of EX.HC/GD PREM DUTT Vs. Union of India & Ors vide order dated 08.11.2019 in W.P.No.11808 of 2019 held as follows:-.

> Accordingly the petition is allowed with the following directions:

i. The benefit of the MACP will be given from the date of completion of 20 years of service by treating the MACP as applicable with effect 1st January 2006 onwards:

ii. The petitioner will be placed in the appropriate pay scale of SI/HC etc as the case may be (for eg. In the case of Sis Rs.9300-34800 with grade pay of 4200) from the date of completion of 20 years of regular service up to the date of voluntary retirement and

iii. The appropriate revised pension orders will be issued and arrears will be paid to the Petitioner within a period of 12 weeks. Failing which the Respondents would be liable to simple interest at 6% per annum on the arrears of period of delay.

53. The above direction was granted for the following relief prayed by the petitioner therein:-

> “a. Issue a writ in the nature of mandamus or certiorari or any other writ or order or directions to the concerned respondent for granting the benefit of 2nd financial up gradation in MACP Scheme in the Pay Band of Rs.9300-34800 with Grade Pay of Rs.4200/- from 15.04.2006 to 01.05.2009 and other consequential benefits including arrears of payment being accrued thereto as per order passed by the Hon’ble Supreme Court dated 08.12.2017.
>
> b. Issue a writ in the nature of mandamus or certiorari or certiorari or direction to the concerned respondent for fixing the pay in the eligible and admissible pay scales which has been revised now as per hierarchy after granting the financial up gradation under MCAP Schemes from the due date from 15.04.2006 in the pay scale of Sub Inspector with admissible grade pay:”

54. The second respondent, Directorate General Central Reserve Police Force, vide letter dated 28.05.2021, it was observed as under:-

> “6.While passing the said order the Hon’ble Apex Court had relied upon the judgment dated

05.03.2020 passed by larger bench of Hon’ble Apex Court in the Civil Appeal No.2016/2020 titled Union of India &Ors Vs. M.V.Mohanan Nair. Wherein the Hon’ble Apex Court had upheld the appeal of UOI that the benefits under the Modified Assured Career Progression Scheme cannot be granted in the promotional hierarchy and it would be in the standard hierarchy of Grade Pay (Pay Levels) in the Pay Band (Pay Matrix) as per the existing MACP Scheme Guidelines. Based on the judgment dated 05.03.2020. Dopt also issued directions vide OM No.22034/4/2020-Estt (D) dated 23.03.2020 that the benefits under the Modified Assured Career Progression Scheme are to be granted in the standard hierarchy of Grade Pay/Pay levels and not in promotional hierarchy.

7. Therefore the copies of Hon’ble Apex Court order 05.03.2020 & 28.04.2021 and DoPt OM No.22034/4/2020-Estt (D) dated 23.03.2020 are enclosed herewith for circulating these among all your formations (including pairvi cells) so that the same would help/assit the lower formations (including parivicells) so that the same would help/assist the lower formations in disposing the representations of the employee, if any pending with their offices containing similar question of law. Ench Judgment dated 28.04.2021”

55. The Delhi High Court inEx.Hc/GD Prahalad Vs Union of India and Ors in W.P.(C).No.8203 of 2019 and batch which in turn followed earlier views in Union of India Vs. Balbir Singh Turn and AnotherAIR 2018 SC 206:(2018) 11 SCC 99.

56. On appeal before Supreme Court by Union of India in a batch of case, in Union of India v. R.K. Sharma, (2021) 5 SCC 579, the Hon’ble Supreme Court allowed the appeal of the Union of India. It held that resolution dated 29.08.2008 with effect from 01.09.2008 for implementation of allowances other than Pay and DA which include financial upgradation under ACP & MACP Schemes. Therefore, the respondents and other similar situated officers were held not entitled to seek the benefits of MACP Scheme from 01.01.2006 according to resolution dated 29.06.2008.This was communicated by a letter dated 28.05.2021 of the second respondent before representation N.P.VII-52/2021-Estt-DA.I (P.Cell).

57. Since, the petitioners contemporaries and batchmates who

were promoted earlier during 2011 directly as Sub-Inspector of Police (GD) were given 2nd incentive in the form of a Grade Pay of Rs.4,200/- there is discrimination. The petitioners who were promoted as Assistant Sub-Inspector of Police (GD) in 2012 ended up getting a lesser grade pay of Rs2800/-. This shows that there was discrimination between those who were promoted in 2011 as Sub-Inspector (GD) and those who were promoted as Assistant Sub-Inspector of Police (GD) in 2012.

58. The promotion of the petitioners as Assistant Sub-Inspector (GD) was a mere intervention on account of lack of vacancies for promotion. It was not a regular promotional post when the petitioners contemporaries were promoted in 2011 as Sub-Inspector of Police (GD).

59. Had the intermediary post of Assistant Sub Inspector (GD) not been created, the petitioner would also got the higher grade pay of Rs.4,200/- on completion of the 20 years of service and Rs.4,600/- on

completion of 30 years like the persons who were promoted in 2011 directly as Sub-Inspector (GD). When the petitioners were promoted as Head Constable (GD) in 1996, the petitioners would have got the Grade Pay of Rs.2,400/- under ACP. The next incentive would have on completion 24 years under the ACP. However, before the petitioners completed 24 years, in 2009 the ACPwas substituted with MACP. In 2012, these petitioners were promoted as Assistant Sub Inspector (GD).

60. The illustration I in Annexure I of the Office Memorandum of Ministry of Personnel, Public Grievances and Pensions dated 19.05.2009 has explained that pre-revised pay scale will be ignored on account of merger of the pre-revised scales recommended by the Sixth Central Pay Commission. It further states that as per CCS [(RP) Rules (Central Civil Services (Revised Pay) Rules, 2008] both of them will be granted grade pay of Rs.4,200/- in the pay band – 2.

61. I am of the view, the petitioners have been treated unfairly by giving them lower grade pay of Rs.2,800/- instead of Rs. 4,200/- when they were promoted as Assistant Sub Inspector (GD). If they were given the same grade pay like their batchmates who were promoted directly as Sub-Inspector (GD) in 2011, the petitioners would have also got the next upgradation of Rs.4,600/- in their grade pay instead of Rs.4,200/-. Rs.400/- difference in the grade pay in a carreer is a huge financial loss which cannot be justified. Therefore, I find sufficient reasons to quash the impugned orders and to grant the relief to the petitioners.

62. Under these circumstances, I am inclined to allow this writ petition by quashing the impugned orders with a consequential directin. Respondents are thus directed to grant grade pay of Rs.4,600/- to the petitioners on par with the petitioners' batchmatches /contemporary under Modified Assured Career Progression Scheme (MACP) and pay the arrears to the petitioner.

63. This exercise shall be carried out by the respondents within a period of 90 days from the date of receipt of a copy of this order. Arrears of the grade pay together with interest at 6% shall be paid to the petitioners immediately thereafter. No costs. Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Secretary,
   The Union of India,
   Department of Home Affairs, New Delhi.

2. The Director General of Police,
   Dte.Genl., CRPF, CGO Complex,
   Lodhi Road, New Delhi-110 003.

3. The Inspector General of Police,
   Rapid Action Force, CRPF,
   R.K.Puram, New Delhi-110 066.

4. The Inspector General of Police,
   Southern Sector, CRPF,
   Road No. 10 C, Jubilee Hills,
   Near MLA/MPs Colony,
   Gayathri Hills, Hyderabad-500 033.

5. The Dy. Inspector General of Police,
   Range-II, Rapid Action Force, CRPF,
   Kendria Sadan, C-Wing, 4th Floor,
   CBD Belapur, Navi Mumbai-410 614.

6. The Dy. Inspector General of Police,
   Legal Branch, GC, CRPF,
   Avadi, Chennai-600 065.

7. The Commandant,
   99 RAF/CRPF,
   Hakimpet, Secunderabad.

8. The Commandant,
   229 Battalion, CRPF,
   B.R.O Complex,
   Bijapur-494 444, Chattisgarh.

9. The Commandant,
   100 RAF/CRPF,
   Vastral,
   Ahmedabad, Gujarat-382 418.

10. The Commandant,
    105 BN, RAF/CRPF,
    Mahalingapuram, Vellalore,
    Coimbatore-641 111.

+1cc to M/S.R.Meenakshi, Advocate, S.R.No.9975

W.P.No.4318 of 2017

NRL(CO)
CT 28/02/2021