

**‘CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**O.A. No. 1661/2018**

**Reserved on: 10.04.2024**

**Pronounced on: 20.05.2024**

**Hon’ble Mr. Manish Garg, Member (J)**

**Hon’ble Dr. Chhabilendra Roul, Member (A)**

Madhu Joshi,  
Senior Auditor,  
(Retired) Age: 56 Years  
Group "B"  
Address for Service:  
Madhu Joshi, w/o Ajay Joshi 650, Laxmibai Nagar,  
New Delhi-110023

....Applicant

(By Advocate: Mr. Paras Joshi)

**VERSUS**

1. The Union of India, Represented by its Secretary,  
Respondent No. 1 Ministry of Personnel, Pension and  
Administrative Reforms, D/o Personnel & Training,  
North Block, New Delhi.

2. The Director, Respondent No.2 O/o Director of  
Accounts, Cabinet Secretariat, Directorate General of  
Security, Room No. 1001, B-1 Wing, 10th Floor, Pandit  
Din Dayal Antyodaya Bhawan, CGO Complex, Lodhi  
Road, New Delhi-110003.

.... Respondents

(By Advocate: Mr. Ranjan Tyagi)

**ORDER****Hon'ble Mr. Manish Garg, Member (J):**

The brief facts of the case are that the applicant joined the Office of Directorate of Accounts, Cabinet Secretariat, New Delhi as Auditor in the pay scale of Rs.330-560 on 06.09.1984. On 21.03.1991, the said office placed the applicant in higher pay scale of Rs. 1400-2600 as Senior Auditor. Thereafter, on 09.08.1999 the Assured Career Progression (ACP) Scheme was introduced by the Department of Personnel and Training (DoP&T). On 01.01.2006, consequent upon the implementation of the recommendation of the sixth Central Pay Commission, the applicant was placed in the pay band-2 (Rs. 9300-34800) + Grade pay of Rs. 4200/-. On 19.05.2009, Modified Assured Career Progression Scheme of 2009 was implemented retrospectively w.e.f. 01.08.2008 whereas the applicant became eligible for second ACP on 06.09.2008 as she completed the requisite 24 years of service on 06.09.2008. Subsequently, on 31.08.2009,

the applicant was granted second MACP w.e.f. 01.09.2008 and placed in Pay Band-2 Rs. 9300-3480 + Grade pay of Rs.4600. Thereafter, she was granted third MACP on 08.09.2014 w.e.f. 06.09.2014 and accordingly placed in pay band – 2 (Rs. 9300 – 34800) + Grade pay of Rs. 4800/-. The applicant took voluntary retirement on 01.05.2017 as Senior Auditor from the office of Directorate of Accounts, Cabinet Secretariat upon completion of more than 32 years of service.

2. The applicant had preferred a representation dated 10.11.2017 requesting for grant of second ACP w.e.f. 06.09.2008 in pay band -2 (Rs. 9300-34800) + Grade pay of Rs. 4800/- in light of the judgment dated 14.02.2017 of Hon'ble High Court of Madras in W.P. (C) No. 33946, 34602 and 27798 of 2014 titled **UOI & ors. Vs. Ranjit Samuel & ors.** The same was followed by the reminder dated 12.12.2017. However, the said representations were rejected by the respondents vide the impugned letter dated 04.01.2018 stating that the benefit of the order of the Hon'ble Madras High Court

is permissible to the petitioners therein only and that since in the instant matter no orders have been issued by the DoP&T, no further action can be taken by the respondents.

3. Being aggrieved by the aforesaid, the applicant has filed the present OA under Section -19 of the Administrative Tribunals Act, 1985 and prayed for the following reliefs:

“(a) Direct the Respondents to grant the applicant 2nd ACP due from 06.09.2008 in pay band-II (Rs. 9300- 34800)+ Rs.4800 G.P and 3rd MACP in pay band-II (Rs. 9300-34800)+ Rs.5400 G.P with effect from 06.09.2014.

(b) Quash the 2nd Respondents order dated 04.01.2018 (Annexure A-1) as the action of the respondent not granting 2nd ACP to the applicant from 06.09.2008 is adversely affecting the applicant.

(c) Quash/Modify Para 9 of the Office Memo. Dated 19.5.2009 (Annex A-5) so that the employees including the applicant who are due for ACP between 1.9.2008 & 19.5.2009 do not put to disadvantageous state.

(d) Quash the order of the 2nd MACP dated 31.08.2009 granted to applicant w.c.f. 1.9.2008 vide Annexure A or in the alternative declaration may be issued that the case of the applicant is due for 2nd ACP w.e.f. 06.09.2008 in pay band-II (Rs. 9300-34800)+ Rs.4800 G.P and 3rd MACP in pay band-II (Rs. 9300-34800)+ Rs.5400 G.P with effect from 06.09.2014

(e) Pass orders considering the orders of the High Courts of Bengaluru and Madras as the

applicant is a similarly placed employee whose pay and pension is affected by the executive order of the respondents as the applicant is entitled for 2nd ACP before implementing the MACP order retrospectively from 1.9.2008.

(f) Pass any other order or direction that this Hon'ble Tribunal may deem fit and necessary in the facts and circumstances of the present case and in the interest of 1. Justice and Equity, including the order as to the cost.”

4. The applicant in the OA has pleaded that she is entitled for second MACP w.e.f. 06.09.2008 in pay band-2 (Rs. 9300-34800) + Grade Pay of Rs. 4800/- and third MACP in Pay band -2 (Rs. 9300-34800) + Grade pay of Rs. 5400 w.e.f. 06.09.2014. She submits that since the benefit has been extended to similarly situated persons, the respondents cannot violate Article – 14 of the Constitution of India by arbitrarily discriminating between similar situated persons.

5. Learned counsel for the applicant further contends that the claim of the applicant is a surviving claim as even in the communication dated 04.01.2018, Directorate General of Security Office of the Director of Account, Cabinet Secretariat has been rejected on the

exclusive ground mentioned in para 2 of the impugned letter dated 04.01.2018, which reads as under:

“2. It is hereby informed that the benefit of the order of the Court is permissible to the petitioners only. For the universal applicability of the decisions of the court in respect of service matters, the nodal Ministry needs to issue general orders after examining the associated complications. Since in the instant case no orders have been issued by the Department of Personnel & Training no further action can be taken by this office.

This has been issued with the approval of the Competent Authority. ”

6. Learned counsel for the applicant submits that the respondents being a model employer cannot confine the reliefs only to those employees who have approached the various Hon'ble Tribunal and Hon'ble High Courts and under such circumstances since there is a declaration in law and decisions of the Hon'ble Tribunal and ultimately, the Hon'ble High Court have held that for the beneficial purpose a retrospective clause cannot be applied thereby depriving the rightful claimant from the benefit of ACP as the applicant became entitled for the benefit of second ACP after completing 24 years of service but the MACP was retrospectively applied and under such

circumstances, the applicant was put to loss. Drawing attention to the averment made in the OA, learned counsel submits that the nodal Ministry has failed to implement the various judgments and therefore, only few employees are benefited whereas other similarly situated employees have been put to the disadvantageous situation by the nodal Ministry as it has failed to implement the judgment universally for all the employees.

7. Respondents have filed counter reply vehemently opposing the OA. Learned counsel for the respondents while contesting the OA submits that Hon'ble Supreme Court vide its order dated 08.08.2024 in CC No. 8271/2014 (Converted to SLP No. 21803/2014) in the matter of **UOI Vs. Shri M. V. Mohanan Nair** has stayed the judgment of the Hon'ble High Court of Kerala dated 24.06.2013 in OP (CAT) No. 2000/2023 (Z) regarding grant of MACP benefits in the promotional hierarchy. In this context, he submits that w.e.f. 01.09.2008, the benefit of ACP Scheme have been discontinued and MACP has come into operation.

He submits that since the applicant has sought second financial upgradation in the promotional hierarchy subsequent to the date from which the MACP is effective, this Tribunal may not like to exercise its power of judicial review.

8. Learned counsel further states that the representation of the applicant dated 10.11.2017 was time barred as the cause of action had arisen for the applicant when the second financial upgradation was granted to her w.e.f. 01.09.2008 under MACP Scheme in Grade Pay of Rs. 4600 in Pay Band-2 vide order dated 31.08.2009. He highlights the fact that the applicant availed the benefit of the financial upgradation without any protest and was not aggrieved by the action of the respondents when she was given the second financial upgradation under MACP Scheme in Grade Pay of Rs. 4600 in Pay Band -2 and now at this belated stage, she has submitted her claim that too after her retirement.



9. It is submitted by the respondents that the Modified Assured Career Progression Scheme was a policy decision taken by the Government on the Recommendation of Sixth Pay Commission and an expert body duly constituted by Law to examine and recommend various service benefits to the government employees. Relying upon a pronouncement of the Hon'ble Supreme Court in the case of **Government of Tamil Nadu Vs. S. Arumugham & Ors.**, learned counsel submits that the Hon'ble Supreme Court has held that the courts cannot substitute their own views for the views of the Government or direct a new policy based on the Courts view and since the Applicant in the OA has challenged the policy of the Government itself this Tribunal shall not exercise its power of judicial review.

10. The respondents have denied the fact that the applicant was entitled to second Financial Upgradation w.e.f. 6-9-2008 in PB-2 with Grade pay of Rs 4800 under old ACP Scheme and submits that with the introduction of Modified Assured Career Progression

Scheme retrospectively w.e.f. 1-9-2008, the applicant was entitled to 2nd Financial Upgradation w.e.f. 1-9-2008 in the MACP Scheme and in case the date from which the scheme shall come in to effect is left to the choice of the Government servant, it will create discrimination amongst the employees and open a pandora box as in that case even the effectiveness of Scheme from the date of issue of order will also be challengeable if the same is not found beneficial for a particular section of employees. Since, the date of a Government order coming into effect is common for all the employees, any flexibility in that will be arbitrary and shall tantamount to discrimination and equality amongst the equally placed employees.

11. We have heard the learned counsel for the respective parties and perused the records.

## **12. ANALYSIS/CONCLUSION**

12.1 The facts narrated above are not in dispute. To appreciate the respective contentions, we would like to reproduce the impugned office order dated 04.01.2018:

“Smt.Madhu Joshi, Ex-Sr.Ar. may refer to her letters dated 10.11.17 and 12.12.17 regarding request for grant of 2nd ACP in the pay band-II(Rs.9300-34800) -Rs 4800 G.P i.e next promotional post in the hierarchy, in the light of judgment dated 14.2.17 of Hon,ble High Court, Madras in WP Nos 33946, 34602 and 27798 of 2014 titled Union of India and Ors Vs Shri Ranjit Samuel & Ors.

2 It is hereby informed that the benefit of the order of the Court is permissible to the petitioners only. For the universal applicability of the decisions of the Court in respect of service matters, the nodal Ministry needs to issue general orders after examining the associated complications. Since in the instant case no orders have been issued by the Department of Personnel & Training no further action can be taken by this office.

This has been issued with the approval of Competent Authority.”

12.2 We find that similar contentions raised by the applicant herein have been dealt with by the Hon’ble Apex Court in paras 11 to 15 of the decision in CA Nos. 1625-1627 of 2021 titled **Union of India & Ors. Etc. vs. S Ranjit Samuel & Ors. Etc.** decided on 24.03.2022 which are re-produced as under :-

“11. Shri Vinay Kumar Garg, learned Senior Counsel appearing on behalf of the respondentemployees, on the contrary, submitted that since the respondentemployees had completed their 24 years of service between January and April 2009, the Screening Committee ought to have considered their cases in January, 2009. It is submitted that, if their cases were considered in January, 2009, they would very well be entitled to get the second benefit/financial upgradation under the ACP Scheme. He

submitted that for the fault of the appellants in not holding the Screening Committee meeting, the respondents employees cannot be penalized. He relies on the order of this Court in the case of Union of India & ors. vs. Vinay Kumar<sup>2</sup>.

12. The issue is no more res integra. Recently this Court, in the case of [Vice Chairman Delhi Development Authority](#) (supra), decided on 8th March, 2022, has considered a similar challenge with regard to the employees of the Delhi Development Authority. In the said case also, the employees had contended that they had completed 24 years of service in January, 2009 and as such, they were entitled to get the second benefit/financial upgradation under the ACP Scheme. This court, relying on its earlier judgments in the cases of Union of India & Ors. vs. M.V. Mohanan Nair<sup>3</sup> and [Union of India vs. R.K. Sharma & Ors.](#)<sup>4</sup> observed thus:

“35. In the present context, none of the employees actually earned a second financial upgradation. They undoubtedly became eligible for consideration. However, the eligibility ipso facto could not, having regard to the terms of the ACP scheme translate into an entitlement. The eligibility was, to put it differently, an expectation. To be entitled to the benefits, the public employer (here DDA) had to necessarily review and consider the employees' records, to examine whether they fulfilled the eligibility conditions and, based on such review individual orders had to be made by DDA. In other words, second ACP up gradation was not automatic but dependant on external factors. Furthermore, as held by this Court in M.V. Mohanan Nair (supra), MACP benefits are only an incentive meant to relieve stagnation framed under the executive policy. Its continued existence cannot be termed as an enforceable right.

36. Such expectation is akin to a candidate being declared successful in a recruitment process and whose name is published in the select list. That, such candidate has no vested right to insist that the public employer must issue an employment letter, has been held by a Constitution Bench Judgment of this Court in [Shankarsan Dash v. Union Of India](#) [(1991) 3 SCC 47]. Therefore, it is held that employees' contention that they acquire a vested

right in securing the second ACP benefit is insubstantial.

37. The employees in this case approached the High Court, complaining that their vested right, which was the assumed entitlement to be given by second ACP, was taken away by the MACP, introduced with effect from 0109 2008, by an order dated 1905-2009. No doubt, the MACP scheme is an executive order. Usually, such orders are expressed to be prospective. However, the executive has the option of giving effect to such an order, from an anterior date; especially if it confers some advantages or benefits to a sizeable section of its employees, as in this case. The nature of benefits as emphasized by this court earlier, were by way of incentives. They are not embodied under rules. In such circumstances, a set of employees, who might have benefitted from the then prevailing regime or policy, cannot in the absence of strong and unequivocal indications in the later policy (which might be given effect to from an anterior date, like in this case), insist that they have a right to be given the benefits under the superseded policy. It is noteworthy that a larger section of employees would benefit from the MACP benefits, because they are to be given after 10, 20 and 30 years' service (as compared with two benefits, falling due after 12 and 24 years of service) and further that such benefits under MACP scheme are subjected to less rigorous eligibility requirements, than under the ACP scheme."

[emphasis supplied]

13. This Bench is sitting in a combination of two Judges. As such, this Bench is bound by the view taken by the threejudge Bench of this Court in the case of [Vice Chairman Delhi Development Authority](#) (supra). Insofar as the reliance placed by Shri Vinay Kumar Garg, learned Senior Counsel, on the order of this Court in the case of [Vinay Kumar](#) (supra) is concerned, firstly, the said order was passed by a two-judge Bench, and secondly, the question that fell for consideration in the said case was with regard to benefit under "Flexible Complementing Scheme" notified by the Union of India with effect from 1st January, 1999. As such, the question that fell for consideration in the case of [Vinay Kumar](#) (supra) was

totally different than the question that falls for consideration in the present matter.

14. In the present case, this Court is considering the question, as to whether the employees, who had completed 24 years of regular service between 1st September, 2008 and 19th May, 2009 would be considered under the ACP Scheme or under the MACP Scheme. This was also a question, which directly fell for consideration and decided by the threejudge Bench of this Court in the case of [Vice Chairman Delhi Development Authority](#) (supra).

15. In that view of the matter, the appeals deserve to be allowed. It is, therefore, ordered that :

(i) The appeals are allowed.

(ii) The impugned order of the High Court of Judicature at Madras dated 14th February, 2017, passed in Writ Petition Nos. 33946, 34602 and 27798 of 2014 and the orders of the Tribunal dated 6th November, 2013, passed in O.A. No. 818 of 2011 and 26 th February, 2014, passed in O.A. Nos. 1170 of 2012 and 437 of 2013 are quashed and set aside;

(iii) The Original Applications filed by the respondents employees herein are dismissed.

(iv) It is held and declared that the cases of the respondentemployees/applicants before the Tribunal would be governed by the MACP Scheme.

(v) In case, the appellants have not finalized the cases of any of the respondents-employees for their entitlement under the MACP Scheme, the same shall be considered in accordance with the MACP Scheme and the benefits be given to them within a period of three months from the date of this order.”

12.3 The Hon’ble Apex Court in **State of Karnataka**

**Vs. C. Lalitha (2006) 2 SCC 747 and State of Uttar**

**Pradesh Vs. Arvind Kumar Srivastava (2015) 1 SCC**

**347** has held that service jurisprudence evolved by this Court from time to time postulates that all persons, similarly situated should be treated similarly; only because one person has approached the Court that would not mean that persons similarly situated should be treated differently; justice demands that a person should not be allowed to derive any undue advantage over other employees; the normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit; not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India; this principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated equally; this principle is subject to well recognized exceptions in the form of delays/laches/acquiescence; persons who did not challenge wrongful action in their case and woke up after long delay, such employees cannot

claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them and delays/laches/acquiescence would be a valid ground to dismiss their claim.

12.4 The applicant falls within the above category. The decision rendered by the Hon'ble Apex Court in **S Ranjit Samuel and ors etc.** (supra) is of a later point of time, i.e., 24.03.2022, therefore, ought to be applied in the facts of the present case. The applicant has approached this Tribunal at a very belated stage that too, after her retirement. Even the submissions of the applicant herself in the pleadings read as under:

“Subsequently, the applicant came to know about the judgment of Hon'ble High Court, Madras. Hon'ble High Court of Madras vide its judgment dated 14th February, 2017 in WP Nos 33946, 34602 and 27798 of 2014 titled Union of India and Ors Vs Shri S.Ranjit Samuel & Ors. upheld the direction of Hon'ble CAT, Madras Bench order dated 26.2.2014 in OA Nos 1170/2012 and 437/2013 and order dated 6.11.2013 in OA No. 818/2011 whereby Hon'ble CAT, Chennai directed the respondents to place the case of the applicants in both the OAs before the Screening Committee for consideration for grant of 2nd financial upgradation under ACP Scheme on completion of 24 years of service, provided they had completed this period as claimed by them prior to the issue of DoPT's OM dated 19.5.2009 by which MACP Scheme came to be introduced.



In nut shell, Hon'ble High Court directed to extend the benefit of ACP Scheme which interalia provided the pay scale attached to the next hierarchical post and not the grade-pay to such employee who had completed the requisite length of service before introduction of the MACP scheme vide DoPT OM dated 19th May, 2017. Since the applicant has completed 24 years of service by 06.09.2008, submitted representation dated 10.11.2017 and 12.12.2017 to the 2nd Respondent to consider her 2nd ACP as held by the Hon'ble High Court, Madras but 2nd Respondent turn down the request of the applicant on the ground that MACP order dated 19.05.2009 has taken retrospective effect from 1.9.2008 and the 2nd ACP of the applicant that became due from 06.09.2008, could not be considered, hence the applicant filed this OA".

12.5 Accordingly, we do not ascribe with the observations made in the impugned order for rejecting the case of the applicants on the reasoning that **"the benefit of the order of the Court is permissible to the petitioners only and for the universal applicability of the decisions of the Court in respect of service matters, the nodal Ministry needs to issue general orders after examining the associated complications and since in the instant case no orders have been issued by the Department of Personnel & Training no further action can be taken by this office"**, however, the applicant has herself relied upon the judgment of the Hon'ble High

Court of Madras in the case of **S. Ranjit Samuel & Ors.**

(supra), which has now been set aside by the Hon'ble

Apex Court on 24.03.2022 in **UOI & Ors. etc. vs. S.**

**Ranjit Samuel & Ors. Etc.** (supra), hence no interference is called for the present OA.

13. Accordingly, we dismiss the OA. Pending MAs, if any, shall also stand disposed of. No costs.

**(Dr. Chhabilendra Roul)**  
**Member (A)**

**(Manish Garg)**  
**Member (J)**

/as/