

**कार्यालय, रक्षा लेखा महानियंत्रक,**  
**OFFICE OF CONTROLLER GENERAL OF DEFENCE ACCOUNTS**  
**उलान बटार मार्ग, पालम, दिल्ली छावनी -110 010**  
**ULAN BATAR MARG, PALAM, DELHI CANTT-110010**

No. AN/XI/11051/OA350/1418/2015/AKP

Dated: 20.03.2018

To,

(i) PCA(Fys) Kolkata	(ii) PCDA (WC), Chandigarh	(iii) PCDA, New Delhi
(iv) PCDA, Bangalore	(v) PCDA (CC) , Lucknow	(vi) PCDA (SWC) , Jaipur
(vii) PCDA (P) Allahabad	(viii) CDA, Jabalpur	(ix) CDA, Guwahati

(THROUGH CGDA WEBSITE ONLY)

**Subject:** Verdict of the Hon'ble CAT Calcutta Bench in OA NO.350/1418 of 2015 filed by Sh. Anjan Kumar Pal & Ors. Vs UOI & Ors.

Litigations have been initiated by officers of Subordinate Accounts Services (AAO/AO/SAO etc.) of the Defence Accounts Departments regarding the claim of the applicants for up-gradation to Grade Pay of Rs.5400/-, under the MACP Scheme, at par with their juniors, in line with Court Judgment of Hon'ble CAT, Chennai in OA No. 966-967/2009. These litigations are pending at various stages, and while defending the litigations, the department has also filed three SLPs in the cases of K Raman, N Srinivaslu & D. N. Singh in the Hon'ble Supreme Court.

2. In one of these OAs mentioned above (OA NO.350/1418 of 2015 filed by Sh. Anjan Kumar Pal & Ors. vs UOI & Ors), the Hon'ble CAT, Calcutta, in its detailed Judgment orders dated 18.01.2018, has ruled that the benefit of Judgment of Chennai Bench in OA Nos.966-967-2009(affirmed in Writ Petition no. 18611-18611 of 2011 by Madras High Court) cannot be extended to applicants and has dismissed the subject OA without costs and without granting any relief to the applicants (Copy Enclosed).

3. In this connection, you are requested to take cognizance of this order and also apprise the Hon'ble Court/Tribunal, through CGSC, about the Hon'ble CAT Calcutta Bench orders dated 18.01.2018 while defending the case(s) being dealt with by your organization in the interest of the State.

  
(Kavita Garg)

Sr. Dy. CGDA (AN)

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(Kavita Garg)

Sr. Dy. CGDA (AN)

275

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
KOLKATA

Reserve On;  
Delivered on:

8.9.2017

18.1.2018

OA No.350/01418/2015

Present:

The Hon'ble Mr. Justice V.C.Gupta, Judicial Member

The Hon'ble Mr. A. K. Patnaik, Judicial Member

The Hon'ble Ms. Jaya Das Gupta, Administrative Member

1. Anjan Kumar Pal, aged about 40 years, son of Shri Milan Kumar Pal, resident of Qtr. 42, Block – IV\_19, Southern Avenue, Kolkata, W.B., Pin- 700029 presently working as Assistant Accounts Officer.
2. Abhijit Sen, aged 39 years, son of Shri Samarendra Nath Sen, resident of 32, S.C. Mukherjee Street, P.O.-Konnagar, Hooghly, W.B. Pin- 712235, presently working as Assistant Accounts Officer.
3. Hemant Kumar Mandal, aged about 38 years, son of Late Devendra Kumar Mandal, resident of EB-133, Sector-I, Salt Lake, Kolkata, W.B. Pin – 700064, presently working as Assistant Accounts Officer.
4. Tarasankar Ghosh, aged about 42 years, son of Shri Banabihari Ghosh, resident of 49/2, Kamini School Lane, P.O. Salkia, Howrah, W.B. Pin – 711106, presently working as Assistant Accounts Officer.
5. Narendra Kumar Sharma, aged about 44 years, son of Late R K Sharma, resident of C/O Kundan Sharma, 3- Dharmatalla Cane. P.O. Bhadrakali, Uttarpara, Hoogly, W.B., Pin – 712232, presently working as Assistant Accounts Officer.
6. Basudeb Gupta, aged about 42 years, son of Late Tarun Chandra Gupta, resident of 2/3D/1, Gopal Chandra Chatterjee Road, Flat no-7, 3<sup>rd</sup> floor, Kolkata, W.B., Pin – 700002, presently working as Assistant Accounts Officer.
7. Rani Priya Sahay, aged about 43 years, daughter of Shri J P N Das, resident of B-17/4E, Prasad Exotica, Canai Circular Road, Kolkata, W.B., Pin – 700054, presently working as Assistant Accounts Officer.
8. Sumit Kumar Mondal, aged about 41 years, son of Late Sudhir Kumar Mondal, resident of Sukdeevpur, PO- Gonipur Maheshtala, Kolkata, W.B. Pin- 700141, presntly working as Assistant Accounts Officer.
9. Ripan Das, aged about 40 years, son of Shri Hari Pada Das, resident of Noapara Bye Lane, Post-Garulia, 24 Parganas (N), W.B., Pin – 743133, presently working as Assistant Accounts Officer.



10. Nanda Kishor Sahoo, aged about 44 years, son of Shri Dibakar Sahoo, resident of IC Block, Qtr. No. 603, Sec - III, Salt Lake, Kolkata, W.B., Pin-700106, presently working as Assistant Accounts Officer.
11. Anup Chanda, aged about 41 years, son of Shri Shankar Lal Chanda, resident of IC Block, Qtr. No. 735, Sec-III, Salt Lake, Kolkata, W.B. Pin - 700106, presently working as Assistant Accounts Officer.
12. Probir Kumar Mondal, aged about 43 years, son of Shri Kalipada Mondal, resident of Sapamirza Nagar, P.O.-Sankarpool, Kolkata, W.B. Pin- 700143 presently working as Assistant Accounts Officer.
13. Deepjyoti Roy, aged about 39 years, son of Shri Dipak Roy, resident of P-201, Chander Village Road, P.O.- Haridevpur, Kolkata, W.B., Pin - 700082, presently working as Assistant Accounts Officer.
14. Shanbhu Kumar Bayen, aged about 42 years, son of Shri Nityananda Bayen, resident of Vill- South Angad Beria P.O.- Tangrakhali P.S.\_ Canning, 24 Parganas(S), W.B., Pin- 743329, presently working as Assistant Accounts Officer.
15. Pushpen Roy, aged about 38 years, son of Shri Provat Kumar Roy, resident of G2/17/1, AP Nagar, Sonarpur, Kolkata, W.B. Pin- 700150 presently working as Assistant Accounts Officer.
16. Dhiman Biswas, aged about 43 years, son of Shri Jitendra Nath Biswas, resident of 300, East Rabindrapally, Surya Sen Road, Lane No. 15(S) PO- Nona Chandanpukur, Kolkata, W.B., Pin - 700122, presently working as Assistant Accounts Officer.
17. Alope Chakraborty, aged about 46 years, son of Late Sunil Chakraborty, resident of Green Valley Apartment, 3<sup>rd</sup> Floor, Flat No. 3, Santigarh, P.O. Shyamnagar, 24 Parganas(N), W.B., Pin- 743127, presently working as Assistant Accounts Officer.
18. Rana Pratap Singh, aged about 51 years, son of Late Bindeshwari Prasad Singh, resident of Qtr No. 32 West, The Park Estate, Ishapore P.O. Nawabganj, 24 Parganas(N), W.B., Pin - 743144, presently working as Assistant Accounts Officer.
19. Narayan Prasad, aged about 38 years, son of Shri Upendra Nath Verma, resident of Qtr No. 121/East, The Park Estate, Ishapore P.O. Nawabganj, 24 Parganas(N), W.B., Pin - 743144, presently working as Assistant Accounts Officer.
20. Amit Roy, aged about 39 years, son of Late Nilratan Roy, resident of 101A, Prantik Apartment, 34BB Street, Bhadrakali, Hooghly, W.B. Pin-712232, presently working as Assistant Accounts Officer.

21. Rudra Narayan Nayak, aged about 44 years, son of Late B C Nayak, resident of IC 688, Salllake, Kolkata, W.B. Pin-700106, presently working as Assistant Accounts Officer.
22. Rajib Das, aged about 40 years, son of Late Ranjit Das, resident of Prantik, Ishapore P.O. Nawabganj, 24 Parganas(N), W.B., Pin – 743144, presently working as Assistant Accounts Officer.
23. Saurav Das, aged about 37 years, son of Shri Kashi Nath Das, resident of C/O Sri K.N. Das, P.O.- Garulia, Nabin Babu Road, 24 Parganas(N), W.B. Pin-743133, presently working as Assistant Accounts Officer.
24. Satyajit Ray, aged about 40 years, son of Shri Manoranjan Ray, resident of 3B, Green Valley, Basunagar 2 ½ No. Gate, Jessore Road, Madhyamgram, Kolkata, W.B. Pin – 700129, presently working as Assistant Accounts Officer.
25. Niraj Kumar Tiwary, aged about 42 years, son of Shri Pramod Prasad Tiwary, resident of EB- 089, EB Block, Sec – I, Salt lake, Kolkata, W.B. Pin- 700064, presently working as Assistant Accounts Officer.
26. Rathindra Nath Mitra, aged about 40 years, son of Late Rabindra Nath Mitra, resident of 1A, First floor, Saptam Apartment, 88 Sahid Nikhil aich Sarani, Subhas Nagar, Dum Dum Cantt, Kolkata, W.B. Pin- 700065, presently working as Assistant Accounts Officer.
27. Subrata Das, aged about 53 years, son of Late Joshodalal Das, resident of 55/494 J K Sukantapally, Jyangra, Kolkata, W.B. Pin- 700059, presently working as Assistant Accounts Officer.
28. Dina Nath Singh, aged about 39 years, son of Shri Bubun Singh, resident of Qtr No. 32/E (FF), The Park Estate, Ishapore P.O. Nawabganj, 24 Parganas(N), W.B., Pin – 743144, presently working as Assistant Accounts Officer.
29. Santanu Banerjee, aged about 39 years, son of Late Ranjit Bhusan Banerjee, resident of Flat No. 101, Breamland Apartment, 143/E Pathagar Road Panihati, Kolkata, W.B., Pin – 700114, presently working as Assistant Accounts Officer.
30. Somendra Nath Dey, aged about 43 years, son of Shri J.N. Dey, resident of Qtr No. 45/East, 1<sup>st</sup> Floor, the Park, Ishapore P.O. Nawabganj, 24 Parganas(N), W.B., Pin – 743144, presently working as Assistant Accounts Officer.
31. Debopreya Das, aged about 44 years, son of Shri Deepankar Das, resident of Qtr No. 37/East, The Park, Ishapore P.O. Nawabganj, 24 Parganas(N), W.B., Pin – 743144, presently working as Assistant Accounts Officer.
32. Ran Vijay Singh, aged about 45 years, son of Late Janglesh Singh, resident of Qtr No. T-1, The Park Estate, Ishapore P.O. Nawabganj, 24 Parganas(N), W.B., Pin – 743144, presently working as Assistant Accounts Officer.



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272

33. Haridas Ghosh, aged about 41 years, son of Shri Sisir Kumar Ghosh, resident of 164/1, Sthirpara, Vivekpally PO-Mondalpara, 24 Parganas(N), W.B., Pin-743127, presently working as Assistant Accounts Officer.
34. Swapan Sarkar, aged about 39 years, son of Shri Hrishikesh Sarkar, resident of 13/A, Main Road East Lane, Kalianiwas, Barrakpore, PO- Nona Chandanpukur, Kolkata, W.B. Pin- 700122, presently working as Assistant Accounts Officer.
35. Jay Singha, aged about 37 years, son of Shri Ram Ratan Singha, resident of C/o Atanu Gosh, Madhya Balia, Garia, Kolkata, W.B. Pin - 700084, presently working as Assistant Accounts Officer.
36. Brahmananda Das, aged about 37 years, son of Shri Binod Bihari Das, resident of Vill- Diglabarh, P.O.- Siddha, Purba Medinipur, W.B. Pin - 721168, presently working as Assistant Accounts Officer.
37. Prakash Kumar, aged about 38 years, son of Shri Nawal Kishore Singh, resident of Flat No. 27, 4<sup>th</sup> Floor, Type - III, CPWD Qtr, Kolkata, W.B. Pin- 700040, presently working as Assistant Accounts Officer.
38. Anjan Chakraborty, aged about 42 years, son of Late S.R. Chakraborty, resident of 267, Arabindo Park, Purba Puntary, Kolkata, W.B., Pin- 700093, presently working as Assistant Accounts Officer.
39. Malabika Sarkar, aged about 42 years, wife of Shri Abhijit Sarkar, resident of of 7/3, B.M. Mandal Road, Santoshpur, Kolkata, W.B. Pin- 700106, presently working as Assistant Accounts Officer.
40. Bivash Chandra Chakraborty, aged about 39 years, son of Shri Benoy Kr. Chakraborty, resident of 3, Bagha Jatin Path, City Center Durgapur, Burdwan, W.B., Pin- 713216 presently working as Assistant Accounts Officer.
41. Koushik De Sarkar, aged about 37 years, son of Shri Asim De Sarkar, resident of Dakshinagar Complex, Block-F, Flat -F/2, Tegharia, Kolkata, W.B., Pin - 700157, presently working as Assistant Accounts Officer.
42. Jaideep Nag, aged about 36 years, son of Shri Satish Nag, resident og Central Govt. accommodation, Qtr. No. AF-124, Type-III, Sector-I, Salt Lake, Kolkata, W.B., Pin- 700064, presently working as Assistant Accounts Officer.
43. Dhananjoy Show, aged about 39 years, son of Late Anil Show, resident of Qtr. No. 532, IC Block, Salt Lake, Sector-III, Kolkata, W.B. Pin- 700064, presently working as Assistant Accounts Officer.
44. Mahendra Prasad Sah, aged about 37 years, son of Shri Ganga Prasad Sah, resident of Central Govt. Accommodation, Qtr. No. - 73, Type-III, Tollygunge, Kolkata, W.B., Pin- 700040, presently working as Assistant Accounts Officer.



45. Dipankar Ghoshal, aged about 39 years, son of Shri Paranesh Chandra Ghoshal, resident of Tentulberia (Madhya Para), Near Netunpara transformer, P.O. Garia, Kolkata, W.B., Pin- 700084, presently working as Assistant Accounts Officer.
46. Shyamal Kanti Biswas, aged about 39 years, son of Late Nalini Ranjan Biswas, resident of Purbachal(Palta), P.O.-Bengal Enamel, 24 Parganas (N), W.B. Pin- 743122, presently working as Assistant Accounts Officer.
47. Anjan Majumdar, aged about 41 years, son of Shri Basuthosh Majumdar, resident of Sahid Ananta Dutta Sarani, P.O.- Rajbari, Kolkata, W.B., Pin- 700081, presently working as Assistant Accounts Officer.
48. Niladri Ghosh, aged about 43 years, son of Shri N.C. Ghosh, resident of 301/1 R.K. Road, New Barrackpur, 24 Paraganas(N), W.B., Pin- 700131, presently working as Assistant Accounts Officer.
49. Mahabrata Mukhapadhyay, aged about 41 years, son of Late Somnath Mukhapadhyay, resident of 51, Howrah, W.B. Pin – 711101, presently working as Assistant Accounts Officer.
50. Prabir Majumder, aged about 43 years, son of Shri R.N. Majumder, resident of Flat No. C-307/G, 92-B.P.M.B.Sarani, P.O-Uttarpara, Hooghly, W.B., Pin- 712232, presently working as Assistant Accounts Officer.
51. Sunirmal Jana, aged about 39 years, son of Shri Goshtho Bihari Jana, resident of Vill+P.O. – Saidpur P.S. Pursurah, Hooghly, W.B. Pin- 712415, presently working as Assistant Accounts Officer.
52. Tanmay Talukdar, aged about 40 years, son of Late Tushar Talukdar, resident of 16 N/1 Bamacharan Roy Road, Republic Garden, Behala, Kolkata, W.B., Pin- 700034, presently working as Assistant Accounts Officer.
53. Pranajit Karmakar, aged about 41 years, son of Shri Ajit Kumar Karmakar, resident of No. 2 Motilal Roy Lane, Shantinagar, P.O.- Bhadrakali, Uttarpara, Hooghly, W.B., Pin- 712232, presently working as Assistant Accounts Officer.
54. Debkanta Karmkar, aged about 43 years, son of Late Gour Karmakar, resident of 128, B K Moitra Road, Baranagar, Kolkata, W.B., Pin- 700036, presently working as Assistant Accounts Officer.
55. Narendra Kumar Roy, aged about 38 years, son of Shri Jainath Roy, resident of 51, CPWD Quarters, AF Block, Sector-1, Salt lake, Kolkata, W.B., Pin- 700064, presently working as Assistant Accounts Officer.
56. Digbijoy Mukherjee, aged about 41 years, son of Late Bijoy Krishna Mukherjee, resident of 110, Upper B.P.M.B. Sarani Bhadrakali Uttarpara, Hooghly, W.B., Pin- 712232, presently working as Assistant Accounts Officer.



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57. Koushik Guha, aged about 39 years, son of Late Dinesh Guha, resident of Bhatneda, PO- Rajarhat Kolkata, W.B., Pin- 700135, presently working as Assistant Accounts Officer.
58. Rajesh Dutta, aged about 39 years, son of Shri D N Dutta, resident of J C Bose Lane, South Dhadka, PO- Asansol – 2, Burdwan, W.B., Pin- 713302, presently working as Assistant Accounts Officer.
59. Uttam Kumar Das, aged about 40 years, son of Shri Pulin Bihari Das, resident of 4/62, C R Colony, Jadavpur, Kolkata, W.B. Pin- 700032 presently working as Assistant Accounts Officer.
60. Anamita Das, aged about 42 years, daughter of Shri Panchoogopal Das, resident of 177/9 Girish Ghosal Road, P.O. Naihati, 24 Parganas (N), W.B. Pin – 743165 presently working as Assistant Accounts Officer.
61. Raja Ray, aged about 39 years, son of Late Dharendra Nath Ray, resident of 138/11, Barui Para Lane, P.O.- Alambazar, Kolkata, W.B., Pin – 700035, presently working as Assistant Accounts Officer.
62. Sushil Roy, aged about 42 years, son of Late Debendra Nath Roy, resident of 25W(GF), Seven Tanks Estate, Dumdam Road, Kolkata, W.B., Pin- 700002, presently working as Assistant Accounts Officer.
63. Manabendra Mondal, aged about 41 years, son of Shri Sunil Kumar Mondal, resident of Flat No. D-2, 1<sup>st</sup> Floor, 31/2, Middle Road, Behind Kali Mandir, Kolkata, W.B. Pin- 700075, presently working as Assistant Accounts Officer.
64. Bibirath Maharana, aged about 44 years, son of Shri Narayana Maharana, resident of Qtr No. 11W/GF/IV/STE Seven Tanks Estate, Gun & Shell Factory, 4 Dum Dum Road, Cossipore, Kolkata, W.B., Pin- 700002, presently working as Assistant Accounts Officer.
65. Gopen Krishna Baidya, aged about 42 years of Late Sanatan Baidya, resident of UBI Lane, Uttarayanpally, Sonarpur, Kolkata, W.B., Pin- 700150, presently working as Assistant Accounts Officer.
66. Md Shamim Anwar, aged about 43 years, son of Shri Md Nasim Uddin, resident of Qtr No. 73/5 Seven Tanks Gun & Shell Factory, 4 Dum Dum Road, Cossipore, Kolkata, W.B., Pin- 700002, presently working as Assistant Accounts Officer.
67. Deepak Das, aged about 42 years, son of Shri Mangan Lal Das, resident of Flat No. 3A, 3<sup>rd</sup> Floor, Renukaloy, 19 Motijheel Avenue, Dumdum, Kolkata, W.B., Pin- 700074, presently working as Assistant Accounts Officer.
68. Soumitra Hazra, aged about 39 years, son of Shri Gadadhar Hazra, resident of 124 Bidhan Park, Sinthee, Kolkata 700090, Kolkata, W.B., Pin- 700090, presently working as Assistant Accounts Officer.



*D. Das*



69. Nirmal Saha, aged about 39 years, son of Shri Narayan Saha, resident of Aurobinda Palli, Dattapukur, 24 Parganas (N), W.B. Pin- 743248, presently working as Assistant Accounts Officer.
70. Anupam Tripathi, aged about 35 years, son of Shri Omprakash Tripathi, resident of B. Ed. College Campus, Gangadharpur, Howrah, W.B. Pin- 711302, presently working as Assistant Accounts Officer.
71. Rajeev Lal, aged about 43 years, son of Late P.N. Lal, resident of Flat No. 01/3, Gouranga Palaze, Bangur Park, Rishra, Hooghly, W.B., Pin – 712248, presently working as Assistant Accounts Officer.
72. Rajib Kumar Dey, aged about 45 years, son of Late Amar Chand Dey, resident of 574, Jugipara, Akhanbazar, P.O.- Chinsurah, Hooghly, W.B., Pin – 712101, presently working as Assistant Accounts Officer.
73. Sandeep Samaddar, aged about 38 years, son of Shri Kanai Lal Samaddar, resident of Flat No. 17, 4<sup>th</sup> floor, Sur Apartment, 17/6 Vidyasagar Road, Kolkata, W.B. Pin – 700065, presently working as Assistant Accounts Officer.
74. Sanjoy Kumar Barman, aged about 39 years, son of Shri K C Barman, resident of 12/1/13 Mondai Para Lane, P.O.- Noapara, Kolkata, W.B., Pin – 700090, presently working as Assistant Accounts Officer.
75. Nabendu Saha, aged about 39 years, son of Late Nityananda Saha, resident of 16/10, Kenaram Ganguly Road, P.O.- Barisha, Kolkata, W.B., Pin- 700008, presently working as Assistant Accounts Officer.
76. Kakali Gupta, aged about 41 years, daughter of Late Bishnu Pada Mitra, resident of 94/3A, Purba Sinthee Road, Dumdum, Kolkata, W.B., Pin- 700030, presently working as Assistant Accounts Officer.
77. Chaitanya Biswas, aged about 41 years, son of Late S C Biswas, resident of Vill- Ekterpur PO- Rautari, Nadia, W.B. Pin- 741248, presently working as Assistant Accounts Officer.
78. Sailen Adhikary, aged about 39 years, son of Shri Harendra Nath Adhikary, resident of 39C/FF, The Park Estate, Ishapore P.O. Nawabganj, 24 Parganas(N), W.B., Pin – 743144, presently working as Assistant Accounts Officer.
79. Swarup Sekhar Acharya, aged about 41 years, son of Late Subodh Acharyya, resident of Nandapalli, Block B, PO- Naihati, 24 Paraganas(N), W.B., Pin – 743165, presently working as Assistant Accounts Officer.
80. Rajsekhar Bose, aged about 39 years, son of Shri Rathindra Nath Bose, resident of Kalyangram, Palta, PO- Bengal Enamel, 24 Paraganas(N), W.B., Pin- 743122, presently working as Assistant Accounts Officer.



81. Somnath Ghosh, aged about 41 years, son of Shri Debnarayan Ghosh, resident of 345, Olaichanditala Road, P.O. & Dist: Hooghly, Hooghly, W.B., Pin – 712103, presently working as Assistant Accounts Officer.
82. Prakash Chandra, aged about 39 years, son of Shri Krishna Prasad, resident of EB-61, Salt Lake, Kolkata, W.B., Pin – 700064, presently working as Assistant Accounts Officer.
83. Bibhuti Bhusan Dutta, aged about 51 years, son of Late Bimal Chandra Dutta, resident of Vill + PO- Bapuji Nagar, Nadia, W.B., Pin – 741121, presently working as Assistant Accounts Officer.
84. Rajeev Kumar Jha, aged about 41 years, son of Shri Satish Chandra Jha, resident of 47/FF, The Park Estate, Ishapore, 24 Parganas(N), W.B., Pin – 743144, presently working as Assistant Accounts Officer.
85. Ishwar Lal Vishwakarma, aged about 39 years, son of Shri Vidya Chad Vishwakarma, resident of 41E/GF, The Park Estate, Ishapore, 24 Parganas(N), W.B., Pin – 743144, presently working as Assistant Accounts Officer.
86. Prabir Kumar Panda, aged about 40 years, son of Shri Sudhangshu Sekhar Panda, resident of 132, The Park Estate, Ishapore, 24 Parganas(N), W.B., Pin – 743144, presently working as Assistant Accounts Officer.
87. Md. Hussain Ahmed, aged about 44 years, son of Late Tojommul Ali, resident of Q No. 41, West/1<sup>st</sup> Floor, Park Estate, Ishapore, 24 Parganas(N), W.B., Pin – 743144, presently working as Accounts Officer.
88. Joyanta Kumar Ganguly, aged about 42 years, son of Shri Dilip Kumar Ganguly, resident of 60/27, Andul 1<sup>st</sup> Bye Lane, PO- Danesh SK Lane, Howrah, W.B., Pin- 711109, presently working as Assistant Accounts Officer.
89. Biswajit Ghosh, aged about 52 years, son of Late Sunil Kumar Ghosh, resident of 17, Gangachar Sen Lane, Kolkata, W.B. Pin- 700036, presently working as Assistant Accounts Officer.
90. Sudip Samaddar, aged about 38 years, son of Shri Chitta Ranjan Samaddar, resident of 158, B.D. Sopan, Khardah, 24 Parganas (N), W.B. Pin- 700116, presently working as Assistant Accounts Officer.
91. Bijay Kumar Jha, aged about 39 years, son of Late Nityanand Jha, resident of Flat No. 3C6, Regent Sonarpur, Sonarpur Sation Road, Near Simultala Mart, Kolkata, W.B., Pin – 700103, presently working as Assistant Accounts Officer.
92. Santanu Dey, aged about 39 years, son of Late Jugal Kishore Dey, resident of C/O Shri T P Chatterjee, 477C, Raja Rammohan Roy Road, Kolkata, W.B. Pin- 700008, presently working as Assistant Accounts Officer.



93. Debesh Kumar Singh, aged about 43 years, son of Shri N P Singh, resident of tr No. IC-567, IC Block, Sector-3, Kolkata, W.B., Pin- 700106, presently working as Assistant Accounts Officer.
94. Sumit Kr Bakshi, aged about 38 years, son of Shri Sunil Bakshi, resident of Baikunth Dev Road, (Lane No. 3), P.O.- Madhymgram Bazar, Kolkata, W.B., Pin- 700130, presently working as Assistant Accounts Officer.
95. Chandra Kanta Pal, aged about 38 years, son of Shri Subhas Chandra Pal, resident of 136 Banerjee Para Road, P.O. & P.S. – Naihati,, 24 Parganas (N), W.B., Pin- 743165, presently working as Assistant Accounts Officer.
96. Mohan Kumar, aged about 44 years, son of Shri C.B. Pd. Verma, resident of LIG 138, Housing Colony, Sardar Patei Nagar, Dhanbad, Jharkhand, Pin- 826001 presently working as Accounts Officer.
97. Subhasis Mallik, aged about 58 years, son of Late janmenjoy Mallik, resident of 36B/1 Rabindra Nath Road, Nabagram, Hooghly, W.B. Pin- 712246, presently working as Accounts Officer.
98. Arup Kumar Sengupta, aged about 53 years, son of Late Jayanta Sengupta resident of C-15 202, Peerless Nagar, Panihati, Kolkata, W.B., Pin- 700114, presently working as Assistant Accounts Officer.
99. Netai Majumder, aged about 42 years, son of Shri Nagendra Nath Majudmer, resident of Vill + Post: Hemnagar, Hingaljanj, 24 Paraganas (N), W.B., Pin- 743439 presently working as Assistant Accounts Officer.
100. Sudhir Ranjan Verma, aged about 50 years, son of Late S. Nath, resident of Flat No. 2/3D, Sunny Dale Complex, Ramchandrapur, 24 paraganas(S), W.B., Pin- 700103, presently working as Assistant Accounts Officer.
101. Julie Chatterjee, aged about 44 years, wife of Shri Hiranmoy Chatterjee, resident of 13/A, Indrani Park, P.O. Tolygunge, Kolkata, W.B. Pin-708033, presently working as Assistant Accounts Officer.
102. Arnab Majumdar, aged about 41 years, son of Late Basutosh Majumdar, resident of B/34, Sahid Ananta Dutta Sarani, PO, Rajbari, Kolkata, W.B. Pin 700081, presently working as Assistant Accounts Officer.
103. Debashis Roy, aged about 45 years, son of Late Phani Bhusan Roy, resident of Narayan Pally, Park Road, PO+PS:Nimta, Kolkata, W.B. Pin-700049, Presently working as Assistant Accounts Officer.
104. Kalyan Mukherjee, aged about 45 years, son of Late Ajit Mukherjee, resident of Vaishnomata Aptt, 1107/5/1 Jessore Road, Dumdum, 24 Parganas (N), W.B. Pin 700028, presently working as Assistant Accounts Officer.
105. Subhasis Datta, aged about 44 years, son of Late Sibananda Datta, resident of Accounts Office, Ordnance Factory, Dumdum, Kolkata, W.B. Pin 700028, presently working as Assistant Accounts Officer.



*Dwg.*

106. Uttam Kumar Patra, aged about 42 years, son of Shri Dulal Chandra Patra, resident of CPWD Qtr. No. 93 Type-III, Tollygunge, Kolkata, W.B. Pin-700040, presently working as Assistant Accounts Officer.
107. Purbasish Ganguly, aged about 43 years, son of Late Bimalendu Ganguly, resident of Flat No. 1B, SATELLITE SAKSHI' 103, Baguiati Road, Opposite Aam Bagan Gas Godown, PO-Jugipara, Baguihati, Kolkata, W.B. Pin-700028, presently working as Assistant Accounts Officer.
108. Srikant Upadhyay, aged about 42 years, son of Shri Bishnudeo Upadhyay, resident of Qtr No. 74, New Campus, CPWD Qtr, AF Block, Salt Lake, Kolkata, W.B. Pin 700064, presently working as Assistant Accounts Officer.
109. Avijit Banerjee, aged about 41 years, son of Late Nityananda Banerjee, resident of Qtr No. 751, IC Block, Sect-III, Salt Lake, Kolkata, W.B. Pin-7000106, presently working as Assistant Accounts Officer.
110. Bishu Halder, aged about 40 years, son of Shri Premangshu Halder, resident of 9, Nalta Barobari, Dum Dum Cantt., Kolkata, W.B. Pin 700028, presently working as Assistant Accounts Officer.
111. Sudhir Kumar, aged about 40 years, son of Shri Ram Bilash Prasad, resident of AF-162 CPWD Quarter, Sector -I, Saltlake, Kolkata, W.B. Pin 700065, presently working as Assistant Accounts Officer.
112. Probhat Bose, aged about 42 years, son of Shri S. Bose, resident of RA/72, SSB Sarani, Sector 2B, Bidhannagar, Durgapur, W.B. Pin 713212, presently working as Assistant Accounts Officer.
113. Mukul Halder, aged about 38 years, son of Shri Gobinda Chandra Halder, resident of Purbasa, Bose para, Anandamoyeetala, P.O. Chandannagar, Hooghly, W.B. Pin 712136, presently working as Assistant Accounts Officer.
114. Md. Firoj Ansary, aged about 38 years, son of Shri Abdul Quiyum Ansary, resident of 38/H/1, Kaukulia Road, Ballygunge, Kolkata, W.B. Pin 700019, presently working as Assistant Accounts Officer.
115. Amit Kumar, aged about 35 years, son of Shri Arun Kumar, resident of Anandomoyee Apartment, 16/3 Bose Pukur Road, PS Kasba, Kolkata, W.B. Pin 700042 presently working as Assistant Accounts Officer.
116. Subrata Ghosh, aged about 41 years, son of Shri Gurudas Ghosh, resident of Jilipibagan, Jagatberh, Sreepally, Burdwan, W.B. Pin 713103, presently working as Assistant Accounts Officer.
117. B.L. Anil, aged about 47 years, son of Shri B.L. Pathy, resident of Flat No. 401, Rishi Enclave, Padmavathi Colony Secunderabad, A.P. Pin 500015, presently working as Accounts officer.
118. Prem Kanta Jha, aged about 48 years, son of Shri Chandrakant Jha, resident of Flat No. 4C14 Regent Sonarpur P.O. Narendrapur, Kolkata, W.B. Pin 7000103, presently working as Assistant Accounts Officer.



*(Signature)*

119. Rajib Roy, aged about 38 years, son of Late Rabindra Nath Roy, resident of A/119, Baghajatin Pally, PO Regent Estate, Kolkata, W.B. Pin, 700092, presently working as Assistant Accounts Officer.
120. Somnath Swarnakar, aged about 40 years, son of Shri Benay Kumar Swarnakar, resident of 217/1, Parui Kancha Road, P.O. Sarsuna, Kolkata, W.B. Pin 700061, presently working as Assistant Accounts Officer.
121. Ashis Tarafder, aged about 42 years, son of Shri Haradhan Tarafter, resident of Happy Home, 5/A Kalicharan Dutta Road, P.S. k Thakurpukur, Kolkata, W.B. Pin 700061, presently working as Assistant Accounts Officer.
122. Debarata Das aged about 38 years, son of Shri Narayan Chandra Das, resident of P-83, Bansdroni New Govt. Colony, Kolkata, W.B. Pin 700082, presently working as Assistant Accounts Officer.
123. Sabyasachi Das, aged about 42 years, son of Late Nityaranjan Das, resident of 74 BPMB Sarani, Bhadrakali Hooghly, W.B. Pin 712232, presently working as Assistant Accounts Officer.
124. Manish Narayan, aged about 37 years, son of Shri B.N. Gupta, resident of EB-I CPWD Qtrs Sector 1 Salt Lake, Kolkata, W.B. Pin 700064, presently working as Assistant Accounts Officer.
125. Sri Kant, aged about 42 years, son of Late BNP Sinha, resident of Sunday Bazar Road, Bisra Nursing Home, Lower Hatia, Ranchi, Jharkhand, Pin 834003, presently working as Assistant Accounts Officer.
126. Saurav Dutta, aged about 42 years, son of Shri Lalit Kr. Dutta resident of EB 172 Sector 1 Salt lake, Kolkata, Kolkata, W.B. Pin 700064, presently working as Assistant Accounts Officer.
127. Sanjay Kr Jena, aged about 42 years, son of Shri Gangan Bihari Jena, resident of IC 416, Sector 3 Salt Lake, Kolkata, W.B., Pin - 700106, presently working as Assistant Accounts Officer.
128. Kamal Kishore Prasad, aged about 40 years, son of Late Baidyanath Prasad, resident of 3A Uma Das Lane, 1<sup>st</sup> Floor, Word 52, Kolkata, W.B., Pin- 700013, presently working as Assistant Accounts Officer.
129. Subhash Prasad Shaw, aged about 39 years, son of Shri Ram Chandra Shaw, resident of 15, Moulana Abul Kalam Azad Road, Howrah, W.B., Pin- 711101, presently working as Accounts Officer.
130. Tarun Kumar Ghosh, aged about 39 years, son of Shri Paresh Nath Ghosh, resident of 422, Jilipibagan, Sreepally, Burdwan, W.B., Pin- 713103, presently working as Assistant Accounts Officer.
131. Animesh Sarkar, aged about 45 years, son of Shri Paresh Ch Sarkar, resident of Qtr No. 5W/GF/STE Cossipore, 4 Dumdum Rd, Kolkata, W.B., Pin - 700002, presently working as Assistant Accounts Officer.



132. Guru Narayan Sah, aged about 38 years, son of Shri Mod Narayan Sah, resident of Dharahar, Banmankhi, Purnia, Purnia, Bihar, Pin- 854202, presently working as Assistant Accounts Officer.
133. Ruby Bose, aged about 44 years, wife of Shri Sajal Bose, resident of 39, Baranoshi Ghosh Street, Kolkata, W.B., Pin – 700007, presently working as Assistant Accounts Officer.
134. Sudipta Basu, aged about 54 years, son of Late Samarendra Nath Basu, resident of 45E, Anath Nath Deb Lane, Kolkata, W.B., Pin – 700037, presently working as Accounts Officer.
135. Ujjal Kumar Nayek, aged about 46 years, son of Late Bonojit Nayek, resident of Vill & Post- Prosastha, Andul, Mouri, Howrah, W.B., Pin- 711302, presently working as Accounts Officer.
136. Ramit Kumar Dey, aged about 38 years, son of Late Ranjit Kumar Dey, resident of 880, Kishoribagan Lane, Pirtala Mearberh, P.O- Chinsurah, Dist- Hooghly, West Bengal. PIN- 712101, presently working as Assistant Accounts Officer.
137. Sanjoy Kumar De, aged about 44 years, son of Shibdas De, resident of Flat-F, Leela Apartment, Kabiraj Idrish Mandal Lane, P.O. – Botanical Garden, Dist – Howrah, Wesh Bengal, Pin- 711103 presently working as Assistant Accounts Officer.
138. Haradhan Nandi, aged about 40 years, son of Birendra Nath Nandi, resident of 43/5, Naskar Para Lane, P.O. – Botanical Graden, Dist- Howrah, West Bengal, Pin- 711103, presently working as Assistant Accounts Officer.
139. Ramesh Kumar, aged about 45 years, son of Late Moti Lal Tiwari, resident of NH 33, Dhalbhumgarh, Singhbhum E, Jharkhand, Pin- 832302, presently working as Accounts Officer at Accounts Office, Ordnance Factory Kanpur on relieved from O/o the Pr. Controller of Accounts (Fys), Kolkata on 30.06.2015.
140. Lina Dutta, aged about 41 years, daughter of Late Arun Kumar Dutta, resident of 395, Thakurpukur Road, Kolkata, W.B., Pin- 700063, presently working as Assistant Accounts Officer at O/o Principal Controller of Defence Accounts, Bangaluru on relieved from O/o the Chief Internal Auditor (Fys), Kolkata on 06.07.2015.
141. Rakesh Kumar Pandey, aged about 45 years son of Shri Ramjee Pandey, resident of -93, G.T. Road, Seoraphully, Hooghly, W.B., Pin – 712223, presently working as Accounts Officer at Accounts Office, Ordnance Factory Bhuswal, Maharashtra, on relieved from O/o the Chief Internal Auditor (Fys), Kolkata on 31.07.2015.

  
, .....Applicants

## VERSUS

1. Union of India through the Secretary, Ministry of Defence, Government of India, South Block, New Delhi-110011.
2. Union of India through the Secretary, Ministry of Finance, Department of Expenditure (Implementation Cell), North Block, New Delhi-110001.
3. The Controller General of Defence Accounts, Ulan Batar Road, Delhi Cantt.-110010.
4. The Principal Controller of Defence Accounts (FYS), Ayudh Bhawan, 10-A S.K. Bose Road, Kolkata-700001
5. The Controller of Defence Accounts, Rajendra Path, Patna, 800019
6. The Controller of Defence Accounts (Pension Distribution), Ayudh Path, Meerut Cantt- 250001
7. The Integrated Finance Adviser, Eastern Command, Fort William, Kolkata-700021
8. Reeta Ghosh, Sr. Auditor, 123, Jodhpur Park, Kolkata- 700068, presently posted at the O/o the respondent No.4
9. Kallol Sengupta, Ex- Sr. Auditor, Retired on 31.05.2015 from the O/o the respondent No.4, A-205, Rajbari Apartment, 26A, R.K.Street, PO - Uttarpara, Dist. Hooghly, Pin-712258
10. S.B. Chakraborty, Supervisor Accountant, (Promoted to Supervisor Accountant on 13.07.2015) 6, S.B.Roy Chowdhary Road, 2<sup>nd</sup> Lane, Lichubagan, PO.-Nimta, Kolkata- 700049, Presently posted at the O/o the respondent No.4.

.....Respondents

.....Pro-forma Respondents

For the Applicant s :Mr.P.Dhar & Mr. P.Adhikari, Counsel  
 For the Respondents : Mr.S.Pal, Counsel.

JUSTICE V.C.GUPTA, JM:ORDER

The Division Bench of this Tribunal while dealing with O.A.No. 350/01418/2015 by order dated 30.05.2015 referred the matter to be decided by a large Bench on the following issues:

- i) The legality, propriety as also the constitutional validity of grant of MACP in the higher Grade Pay to the Sr. Auditors beyond their normal entitlement on promotion in the hierarchy;
- ii) The correctness of applying the principle of stepping up apply to a senior in promotional post when junior in a feeder post by virtue of MACP is bestowed with higher grade pay than such senior i.e.



to a case where the "senior" and "junior" do not belong to the same post with same scale of pay with similar entry points;

iii) Whether stepping up in this case would attract the provisions of Clause 10 and 20 of MACP scheme itself and whether clause 10 and 20 of MACP scheme would at all apply to a case where the 'senior' holding a higher post with higher scale of pay and Grade Pay became subsequently and the 'juniors in the feeder post by virtue of MACP scheme would be getting higher Grade Pay than such 'seniors' when such 'senior' and 'junior' do not belong to the same post with same scale of pay and Grade Pay;

iv) Whether a question of law kept open by the Hon'ble Apex Court could be examined de novo by a Tribunal discarding a view already taken on the issue by the Hon'ble High Court;

v) Accordingly, whether the AAOs would be entitled to stepping up or grant of higher Grade Pay on par with the Sr. Auditors who marched ahead of them in the matter of Grade Pay by virtue of grant of MACP;

vi) If not, what is the remedy available to the AAOs."

Thereafter, the Hon'ble Chairman constituted the Larger Bench which is now seized with the matter to answer the reference made by the Division Bench of this Tribunal on the aforesaid issues.

#### History of Reference

2. For the purpose of deciding the points of reference (supra), some facts are necessary to be looked into. The Applicants filed this Original Application U/s. 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"a) To grant leave under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987 to the applicants to move this application jointly since the impugned order was passed by rejecting the similar prayer of all the applicants;

b) To direct the respondents to grant the applicants the Grade Pay of Rs. 5400/- along with arrears and all consequential benefits, with effect from 01.09.2008 (i.e. the date on which proforma respondents (Senior Auditors), working in the Respondents' establishment, was placed in Grade Pay Rs. 5400/-), by providing the same benefit to the applicants as the benefit of the judgment dated 29.12.2010 passed by the Hon'ble Central Administrative Tribunal, Madras Bench in OA Nos. 966 and 967 of 2009 (S.Prabhu-II & Ors-Vs-Union of India & Ors) which was upheld by the Hon'ble High Court, Madras & the Hon'ble Supreme Court.

c) Issue such other orders or directions, and grant such other and further relief, as might be considered just and proper in the facts and circumstances of the case;

d) Any other order and/or orders as Your Lordships may deem fit and proper."

*(Signature)*



3. The relief sought by the Applicants is virtually based on the decision rendered by the **Chennai Bench of this Tribunal in OA Nos. 966 and 967 of 2009, disposed of on 29<sup>th</sup> December, 2010.** The relevant portion of the decision is quoted hereunder for ready reference:

*"6. From the records, it is seen that the applicants who were initially appointed as clerks and having been qualified in the departmental examinations at various stages have been promoted to the post of Accounts and Section Officers. Subsequently, the applicants were promoted as Sr. Accounts and Assistant Accounts Officers based on the seniority and all the applicants are holding the post of AAOs. The above facts are admitted by the official respondents in their reply. In the reply it is also admitted that the private respondents have not acquired the qualifying examinations for promotion as Section Officers and accordingly, they were stagnated at the level of Sr. Accountants. When the facts are like this, it appears that on introduction of MACP Scheme while implementing the recommendation of the VI Pay Commission's recommendations; three financial up gradations were extended to the private respondents. According to the respondents, they are rightly granted the third financial up gradation and the grade pay of Rs. 5400/- was given to them based on the eligibility criteria of the above scheme. We are not in agreement that the above reasoning as contended by the official respondents as well as by the private respondents. When the fact remains that the applicants having qualified in the departmental examination and able to gain further promotions as per the Recruitment Rules and also exercising supervisory role as against the private respondents, are at loss to note as to how they could be given lesser pay, whereas, the private respondents were given higher pay. We do not find fault with the official respondents by devising the scheme to extend the benefits of such of those employees who are stagnating in service for number of years but that does not mean that in the guise of implementation of the said scheme, persons like the applicants who acquired the necessary qualifications viz: completion of the departmental examinations and gained regular promotions as per Recruitment Rules could be given lesser scale of pay. The private respondents who are holding the position of Sr. Accountants functioning under the control of the applicants cannot be fixed in a grade pay higher than the applicants. In fact, FR-22 provides for the removal of anomalies by stepping up the pay of seniors when their juniors happen to draw more pay. In the instant case, the private respondents who are functioning inferior than the applicants and who are not even qualified to be promoted to the post, held by the applicants are given higher pay scale in the guise of implementation of the scheme which is unsustainable in law.*



7. Even though the Apex Court in its decision rendered in *Secretary, Finance Department and others v West Bengal Registration Service Association and others -1993 SUPP (1) SCC 153* held to the effect that determination of pay scales is the primary function of the executives and not the judiciary, in the very same decision, the Supreme Court has emphasized that the Courts have jurisdiction to grant relief to the aggrieved employees when they are unjustly treated an when the state action is arbitrary. In the instant case, we are of the opinion that the applicants are unjustly treated inasmuch as higher pay scale is given to the private respondents who are functioning inferior

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than the applicants and who have not even qualified themselves to be promoted to the posts which are held by the applicants.

8. Even though, we are of the opinion that in the guise of implementation of the scheme, the private respondents are given the higher pay scales than the applicants and one of the relief claimed in the applications is to quash the office memorandum wherein such benefit is extended to the private respondents. In the interest of justice, we do not propose to take away such benefits which are being extended to the private respondents. However, we are inclined to give relief to the applicants by directing the respondents to extend the benefit of the MACP scheme in favour of the applicants by fixing their grade pay at Rs. 5400/- w.e.f. the date on which such benefit was extended to the private respondents.

9. For the reasons stated above, both the applications are disposed of in the following terms:

"There will be a direction to the Respondents to grant the revised pay to the applicants by extending the benefit of MACP Scheme in favour of the applicants by fixing their grade pay at Rs. 5400/- from the date on which the said benefit was extended to the private respondents and to disburse the accrued arrears, if any, to the applicants, within a period of four weeks from the date of receipt of copy of this order. However, there will be no order as to costs."

4. The decision rendered by the Chennai Bench, as aforesaid, was the subject matter of challenge before the Hon'ble High Court of Madras, filed by the Respondent-Department, in W.P Nos. 18611 & 18612 of 2011. The Hon'ble High Court of Madras vide its order dated 19.03.2014 dismissed the said Writ Petitions, thereby upholding the order of the Madras Bench of the Tribunal. The operative part of the order of the Hon'ble High Court of Madras is quoted herein below for ready reference:

"14. This Court, on a careful consideration of the rival submissions and scrutiny of the materials placed before it, is of the considered opinion that there is no error apparent or infirmity in the reasons assigned by the Tribunal for allowing the original applications and finds no merit in these writ petitions.

15. Hence for the reasons assigned above, both these writ petitions are dismissed confirming the common order dated 29.12.2010 passed in OA Nos. 966 and 967 of 2009 by the Central Administrative Tribunal, Chennai. The writ petitioners/appellants herein are directed to extend the benefit of MACP Scheme to the private respondents/applicants in original applications by fixing their grade pay at Rs. 5400/- with effect from the date on which the said benefit was conferred to the private respondents 4 to 26 in the original applications and the said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order. No Cots. Consequently, the interim orders granted in M.P.No. 1 1 of 2011 in these writ petitions are vacated and both are dismissed."

5. The above order of the Hon'ble High Court of Madras was also carried in SLP by the Respondent Department to the Hon'ble Apex Court in CC No(s) 11103/2014



W2

which was also dismissed on 19.03.2014. The order of the Hon'ble Apex Court is quoted herein below for ready reference:

*"Delay condoned.*

*We find no merit in this petition. The Special Leave Petition is dismissed.*

*However, the question of law is left open."*

6. In compliance of the aforesaid orders, the Respondent-Department vide Office Order No. 82 dated 28.08.2014 granted the benefit of the GP of Rs. 5400/- to 48 persons as could be evident from Annexure-A/12 at page 240.

7. The **Bombay Bench** of the Tribunal, in OA Nos. 540 to 543 of 2011 granted the said benefit to the Applicants therein on 17.11.2014 based on the judgment of the Chennai Bench

8. The **Guwahati Bench** of the Tribunal also in Original Application No. 040/0008 of 2014 granted the said benefit to the applicants therein on 25<sup>th</sup> February, 2015 based on the judgment of the Chennai Bench

9. The **Principal Bench** of the Tribunal in OA No. 1994 of 2014 extended the said benefits to the applicants therein on 29<sup>th</sup> May, 2015 based on the judgment of the Chennai Bench

10. However, when another matter came up before the **Principal Bench** of the Tribunal in OA No. 436/2015, the Division Bench, vide order dated 26.11.2015, after considering the judgments of the Madras Bench, expressed different opinion. The relevant portion of it would run thus:

*" 14. Another simple example would illustrate this. When a direct recruit IAS officer joins as SDM on his first posting, it may happen that the second officer (his subordinate) may draw higher pay as a result of his length of service. That does not reduce the authority or control of the SDM as a superior officer. But he cannot claim stepping up of pay. Therefore, on careful reading of the rule position regarding stepping up of pay and the respective Schemes, one would say that such stepping up of pay can be granted only in specific cases, as would be seen from the circular quoted above. We, therefore, are in agreement with the learned counsel for the respondents that this is a case where principle of stepping up of pay would not apply at all. In fact even if for arguments sake to apply stepping up of pay, we find that the Courts have only guaranteed stepping up of 'pay' and as pointed out by the respondents total pay drawn by applicants is higher. So, therefore is no contradiction.*

15. The other facts that should be noted is that MACP is an anti stagnation measure. If a government servant does not get regular promotions to higher posts, then in order to ensure that at least his pay scale (now grade pay) goes up, he is given up gradation in pay scale (now grade pay) without change in his designation and duties. Again in such a situation, it may happen that a junior draws higher pay as a result of this but in no way, it would change the authority of the superior. Moreover, MACP is an 'up gradation' not a 'promotion' as argued by the learned counsel for the respondents. Also, the respondents have clarified that the total pay of the applicants is not less than the pay of their subordinates. It is only the Grade Pay which is different as a result of the MACP Scheme. It is for this reason that para 20 of the MACP

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Scheme, cited above, specifically provide for such a situation as follows:

"20. Financial up gradation under MACP shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial up gradation for the senior employees on the ground that the junior employee in the grade has got higher pay/grade pay under the MACPS."

16. Therefore, we are of the considered opinion that the claim of the applicants is completely misplaced relying on application of wrong principles which would, in fact, result in double benefit because they would get the benefit of promotion as well as up gradation, which was never the spirit of the MACP Scheme. We, therefore, find no merit in this OA and dismiss the same."

11. When this judgment was placed before the Division Bench of this Tribunal, the Division Bench, in view of the conflicting opinion on similar facts referred the matter to Hon'ble Chairman to set at rest the conflicting view of two benches of equal strength by a Larger Bench to answer on the controversy which has arisen on account of conflicting judgments.

12. It is pertinent to mention here that while delivering the judgment in OA No. 436 of 2015 the Principal Bench of the Tribunal, not only considered the judgment rendered by the Chennai Bench but also the judgment of the Guwahati Bench of CAT and full bench judgement rendered by Ernakulum Bench of CAT passed by 3 Hon'ble Members in OA.No.1103 of 2011 delivered on 22.03.2013. The sum and substance of the judgment of the Principal Bench is that the benefit of MACP extended to the private respondents was purely personal and has no relevance to the seniority and, therefore, held that the benefit of equalisation of GP cannot be extended.

#### Factual matrix

13. It is now become necessary to have a look of the factual matrix of this case. The facts relating to the present case in brief are as under:

- (a) The applicants in the present case are working as Accounts Officer (AO)/ Assistant Accounts Officer (AAO) in different establishment of Defence Accounts Department of West Bengal except Applicant Nos. 139, 140 & 141; and are serving in Kanpur, Bengaluru and Bhuswal of Maharashtra in the Defence Accounts Department. But as per Rule 6(1) (iii) of the CAT (Procedure) Rules, 1987 they have filed this OA before this Bench as the cause of action has arisen within the jurisdiction of this Bench; The applicants No. 87, 96, 97, 117, 129, 134, 135, 136 and 139 are working as A.O. and are in PB-II (9300-34800) with GP of Rs.5400 and rest are holding the post of AAO on substantive basis since before 01.09.2008. The Applicants were initially appointed as Auditor/Junior Clerk under the Respondent-Department in the lower stream in the accounts cadre, as direct recruits/ fresh appointees. The applicants, after passing the department subordinate accounts service examination (in short 'SAS' examination) were promoted to SO (Accounts) (in short 'SO (A)');

- (b) In the 6<sup>th</sup> CPC the post of SO (A) and AAO were merged together and re-designated as Assistant Accounts Officer and was placed in Pay Band-2 (Rs. 9300-34800/-) with a corresponding Grade Pay of Rs. 4800/-.
- (c) The post of AAO is a Grade-B gazetted. The work of the AAO is also supervisory in nature as Head of the Section and as per office Manual Part I of Defence Accounts Department, the Annual Performance Assessment Report of Senior Auditors, Auditors Clerks, Typist, DEOs and MTSs were written annually by AAO/SO (A) on the prescribed format. As such, the private respondents are subordinate officers of the applicants:
- (d) After the recommendation of the 6<sup>th</sup> CPC the concept of GP was introduced which is the determining factor for various facilities available to staff viz; Travelling Allowance/ Daily Allowance/ Lodging charges/ LTC/ Staff quarters etc including the status in the official hierarchy? Chart showing the facilities according to GP is given at page 52 of the OA which is extracted herein below:

GP(Rs)	Lodging Charges per day	Food Bill per day	Travel entitlement	Transport Allowance X category city	Y Category City	Quarters allotment type
7600 to 8900	4500	450	AC 1 <sup>st</sup> Class/Air Travel	3200	1600	V-A-D-II upto 106 Sq.mt
5400 to 6600	2250	300	AC II Tier/Air Travel			

- (e) The private respondent nos. 8, 9 and 10 were granted the benefits of third MACP and their GP was enhanced to Rs. 5400/- w.e.f. 01.09.2008. They got these benefits on account of their stagnation in the lower post of Senior Auditor w.e.f. 01.09.2008 strictly in accordance with MACP scheme by placement on personal basis in the immediate higher grade only with specific mention that such financial upgradation shall not amount to actual or functional promotion and shall also have no relevance to their seniority vide order dated 23.12.2009 (Annexure A-8 to O.A.). They were admittedly junior in rank to the applicants. The private respondents got promotions and financial up gradation as per data provided by respondents is shown in the following table;

Name of Res	Date of Entry	Entry Gr.Post	Ist Promotion	2 <sup>nd</sup> ACP	3 <sup>rd</sup> MACP	
Kollal Sengupta	09.11.1977	Auditor	Sr. Auditor/ 01.04.1987	29.04.2002	01.09.2008	
Shanti Bikas Chakrabarty	14.06.1977	Auditor	Sr. Auditor/ 01.04.1987	29.04.2002	01.09.2008	Become Sup. A/c/13.7.2015
Rita Ghosh	05.05.1978	Auditor	Sr. Auditor/ 28.05.1990	06.05.2002	01.09.2008	

*[Handwritten signature]*

255

(f) The applicants as well as private respondents belong to "Defence Account Department" (DAD). The hierarchy in DAD as per service rules is as under;

- |  |  |
|--|--|
| 1. Clerk   | DR-PB-1(5200-20200- GP-1900/2400   |
| 2. Auditor- entry  | 50%DR- PB-1(5200-20200) - G.P- 2800<br>50% by Promotion after clearing SAS I |
| 3. Sr. Auditor-  | by promotion --PB-II (9300-34800) -GP-4200                                   |
| 4. Supervisor Accounts-<br>or<br>Asstt. Account Officer- | by promotion--PB-II (9300-34800) -GP-4800<br>After clearing SOGE Exam        |
| 5. Account officer-                                      | by promotion- - PB-II (9300-34800) -GP-5400                                  |
| 6. Sr. Account Officer                                   | by promotion—PB-III (15600-39100)-GP-5400                                    |

#### Rule Position

14. The provision was made in 2008 Rules to resolve the anomaly of pay at the time of revision of pay only under 2008 Rule by way of stepping up the pay equal to amount of difference of pay of a senior whose pay on revision was fixed less than his junior. This rule of stepping up has been provided in Note 10 of Rule 7 of 2008 Rules. The same is also extracted herein below

"Note:10- In cases, where a Government servant promoted to a higher post before the 1<sup>st</sup> day of January, 2006 draws less pay in the revised pay structure than his junior who is promoted to the higher post on or after the 1<sup>st</sup> day of January, 2006, the pay in the pay band of the senior Government servant should be stepped up to an amount equal to the pay in the pay band as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Government servant subject to the fulfilment of the following conditions, namely:-

- (a) both the junior and the senior Government servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.
- (b) the pre-revised scale of pay and the revised grade pay of the lower and higher posts in which they are entitled to draw pay, should be identical.
- (c) the senior Government servants at the time of promotion have been drawing equal or more pay than the junior.
- (d) the anomaly should be directly as a result of the application of the provisions of Fundamental Rule 22 or any other rule or order regulating pay fixation on such promotion in the revised pay structure. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this Note need not be invoked to step up the pay of the senior officer.

(2) Subject to the provisions of Rule 5, if the pay as fixed in the officiating post under sub-rule (1) is lower than the pay fixed in the substantive post, the former shall be fixed at the same stage as the substantive pay."



15. Rule 15 gave overriding effect of 2008 Rules over other revised pay rules including Fundamental Rules subject to provisions of these Rules to such extent they are inconsistent with 2008 Rules. Rule 15 is quoted herein below for convenience.

"15. **Overriding effect of rules-** The provisions of Fundamental rules, the Central Civil Services (Revision of Pay) Rules, 1947, the Central Civil Services (Revised Pay) Rules, 1960, Central Civil Services (Revision of Pay) Rules, 1973, Central Civil Services (Revision of Pay) Rules, 1986, and CCS (Revised Pay) Rules, 1997 shall not, save as otherwise provided in these rules, apply to cases where pay is regulated under these rules, to the extent they are inconsistent with these rules."

16. Neither Revised Pay Rules 2008 nor MACPS was ever declared ultra vires by any Tribunal or Court. Rather it was accepted by the applicants as their pay had been revised as per revised pay Rules of 2008 and they got the benefit of the same on submission of their option.

17. The applicants and private respondents are the employees of Central Government. The Central Government constituted VI Central Pay Commission (CPC) to revise the service condition of its employees including the pay and other monetary benefits. The report submitted by VI CPC was considered and the recommendations relating to structure of emoluments, allowances, conditions of service and retirement benefits including account cadre of the applicants were partly accepted by the Central Government. To give effect to the accepted recommendations of VI CPC the Central Government in pursuance of powers conferred under article 309 and also after consultation of CAG under clause 5 of Article 148 of Constitution of India promulgated Rules to revise the pay of its employees on 29<sup>th</sup> August, 2008 known as **Central Civil Services (Revised Pay) Rules, 2008**.

18. The VI CPC also recommended three up gradations under Assured Career Progression Scheme at 10, 20 and 30 year as per modified recommendations submitted by the CPC. This recommendation was also accepted by the Central Government. A **Modified Assured Career Progression Scheme (MACPS)** was adopted and promulgated by the Central Government by issuing OM dated 19.5.2009 after supersession of previous ACP, which also have statutory force by virtue of part XIV of Constitution of India as subordinate legislation. The relevant extracts of letter date 19.05.2009 for this *is* are extracted herein below:

"9. Any interpretation/clarification of doubt as to the scope and meaning of the provisions of the MACP Scheme shall be given by the Department of Personnel and Training (Establishment-D). The scheme would be operational w.e.f. 01.09.2008. In other words, financial upgradations as per the provisions of the earlier ACP Scheme (of August, 1999) would be granted till 31.08.2008.

10. No stepping up of pay in the pay band or grade pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACP Scheme.

19. The MACP scheme introduced vide aforesaid letter dated 19.05.2009 was annexed with that letter as annexure-I. The relevant paragraphs are also extracted herein below for ready reference;

Annexure- I

Modified Assured Career Progression Scheme (MACPS)

"16. On grant of financial up-gradation under the Scheme, there shall be no change in the designation, classification or higher status. However, financial and certain other benefits which are linked to the pay drawn by an employee such as HBA, allotment of Government accommodation shall be permitted.

17. The financial up-gradation would be on non-functional basis subject to fitness, in the hierarchy of grade pay within the PB-1. Thereafter for up gradation under the MACPS the benchmark of 'good' would be applicable till the grade pay of Rs. 6600/- in PB-3. The benchmark will be 'Very Good' for financial up-gradation to the grade pay of Rs. 7600 and above.

19. The MACPS contemplates merely placement on personal basis in the immediate higher Grade pay /grant of financial benefits only and shall not amount to actual functional promotion of the employees concerned. Therefore, no reservation orders/roster shall apply to the MACPS, which shall extend its benefits uniformly to all eligible SC/ST employees also. However, the rules of reservation in promotion shall be ensured at the time of regular promotion. For this reason, it shall not be mandatory to associate members of SC/ST in the Screening Committee meant to consider cases for grant of financial up-gradation under the Scheme.

20. Financial upgradation under the MACPS shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial up-gradation for the senior employees on the ground that the junior employee in the grade has got higher pay/grade pay under the MACPS."

20. For removing the doubts about implementation of MACPS, the OM No. 35034/3/2008-Estt.(D), dated 09.09.2010 was issued. The reference No.8 of aforesaid OM dated 09.09.2010 made it crystal clear that in case where the Government servant have already earned 3 promotions and still stagnated in one grade for more than 10 years shall not be entitled for any further up gradation under MACPS.

21. We have heard Mr. P. Dharl & Mr. P. Adhikari, learned counsel appearing for the Applicants and Mr. S. Pal, the learned counsel appearing for the Respondents and perused the records as well as written submissions filed by the parties.

#### Case of Applicants

22. The applicants, who are working as AAO and some of them working as AO, filed this petition stating that they were working as AAO on substantive post as on 01.09.2008. The private respondent no. 8, 9 & 10 were granted the benefit of 3<sup>rd</sup> MACP in Grade Pay of Rs. 5400/- while they were working as Senior Auditor on the lower post to the post of the applicants.

23. The applicants were initially appointed as auditor / junior clerks in the department as direct recruit in the lowest stream of the cadre. The applicants after passing the departmental examination were promoted to SO and then AAO. The post of SO and AAO was merged in the 6<sup>th</sup> CPC and placed in PB-2 with GP of Rs. 4800/-. The AAOs are Group-B gazetted post. The work of AAO is supervisory in nature and the annual performance appraisal report of senior auditor / clerks / typist etc. are written annually by them and as such private respondents are subordinate officer to the

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applicants. After grant of 3<sup>rd</sup> MACP, the private respondents, the junior officer of the applicants getting more facility and allowances like travelling, transportation, fooding, and lodging allowances etc. on the basis of higher grade pay granted to them by grant of 3<sup>rd</sup> MACP.

24. It is contended that the similar controversy was dealt with by Chennai Bench of this Tribunal and benefit of Grade Pay of Rs. 5400/- was granted to the applicants of that case (who were similarly situated with the applicants of this case). The decision of Chennai Bench was affirmed by Hon'ble Madras High Court. The SLP filed by official respondents Union of India and others against the same was also dismissed. The learned counsel for the applicant vehemently argued that decision rendered by Madras High Court is binding on this Tribunal in absence of any judgment of jurisdictional High Court.

25. He further submitted that the judgment of Madras High Court was affirmed by Hon'ble Supreme Court while dismissing the SLP with point of law open does not mean that Madras High Court judgment has lost its binding effect and lost its precedential value. It only means that the Supreme Court while dismissing the SLP without assigning any reason does not put his seal of correctness of the judgment of Hon'ble High Court and as such judgment rendered by Hon'ble Supreme Court dismissing the SLP would not be precedent under Article 141 of the Constitution.

26. It was further contended that Division Bench of different Benches of Tribunal included Bombay, Guwahati and Principal Bench also followed the decision of the Madras High Court. Hence, this Bench while hearing the matter is not competent to go against the judgment of Madras High Court and Madras High Court judgment is binding upon this Tribunal. The Tribunal has no option except to follow the Madras High Court judgment referred herein above.

#### Submissions of the Counsel for the Applicants

27. The applicant in this regard relied upon various judgments including the judgment of the Supreme Court in **Kunhayammed and others Vs. State of Kerala and others 2000 (6) SCC 359**. After relying upon the judgment the learned Counsel argued that whether the order of refusing of SLP is a non-speaking or speaking order, but in either case does not attract the doctrine of merger and as such the order of refusing the SLP does not stand substituted in place of the order under challenge and all that it means the court was not inclined to exercise its jurisdiction so as to allow the appeal and as such the judgment of Madras High Court remain binding upon this Tribunal which is the Court of first instance.

28. He also relied upon judgment of Hon'ble Supreme Court in **Sandhya Educational Society and others Vs. U.O.I. and others 2014 (7) SCC 701** and argued that judicial decorum and discipline is paramount and, therefore, a co-ordinate Bench has to respect the judgment or order passed by another coordinate Bench and cannot on mere assumptions refer the matter for consideration by a Larger Bench.

29. It was further argued that this Tribunal being Court of first instance cannot go against the judgment of the High Court as per judgment rendered by Supreme Court in **L. Chandra Kumar Vs. U.O.I and others 1997 (3) SCC 261** and as such its subordinate court is bound by the order of High Court in view of another judgment rendered by Hon'ble Supreme Court in **Sub Inspector Rooplal and another Vs. Lt. Governor through Chief Secretary, Delhi and others. (2000)1 SCC 644**. It was further argued that the Hon'ble Apex Court expresses its anguish to the act of a coordinate Bench of Tribunal over rule the earlier judgment of another coordinate Bench of the same Tribunal. It was ruled that in case any coordinate Bench is of the opinion the

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earlier view taken by the coordinate Bench of the same Tribunal requires reconsideration the bench ought to have refer the matter to Larger Bench so, that the difference of opinion between two Benches of the same Tribunal of the same strength could have been avoided.

30. Taking support of judgment in **Bishnu Ram Borah and another Vs. Parag Saikia and others 1984 (2) SCC 488** it has been contended that every Tribunal is subject to judicial review jurisdiction of the High Court under Article 226 of the Constitution. The Judgment of High Court binds all and every court and Tribunals subject to supervisory jurisdiction within state under Article 226 and 227 of the Constitution.

31. He further relied upon the judgment of **Shreedharan Kallat Vs. U.O.I. & others 1995 (4) SCC 207** and argued that once the High Court settled any issue vide its judgment, the Tribunal committing error of grave nature by making and attempting to re-open the issue.

32. Relying upon another judgment of Supreme Court in **RBF Rig Corporation, Mumbai Vs. Commissioner of Customs [Imports] 2011 (3) SCC 573** the learned Counsel for the applicant argued that if High Court molded the relief in such a manner which may meet out justice to an for aggrieved person, it would not be open the subordinate Tribunal to examine whether a direction issued by High Court under its jurisdiction was correct and to refuse to carry it out. If it is allowed to be done by the Tribunal it means to denial of justice and destroys the principle of hierarchy of courts in the administration of justice. When the issue has attained finality it is not possible for the court to reopen the same. The Bench of equal strength cannot reopen the same disagreeing with the decision rendered by earlier Bench of equal strength and if later Bench dissent with the earlier Bench decision the matter can be referred to the Larger Bench. The matter placed before Chairman for constitution of Larger Bench for considering the conflict opinion of two Benches. The Larger Bench then have to be consider the correctness of the earler decisions and Lager Bench can overrule the view taken by the earlier benches and declare the law which would be binding to all Benches. In this regard the applicant relied upon **K Ajeeth Babu Vs. UOI & others 1997 (6) SCC 473**.

33. It was further argued that the Madras High Court in other writ petitions considered the observation of keeping the points of law open and held that it does not mean that the law declared by High Court has lost its precedential value.

34. The order of Chennai Bench was ultimately implemented. Hence, applicants being similarly situated are entitled to get the similar benefit.

#### Defence of Respondents

35. The respondents contested the claim alleging inter-alia on the ground that scheme of MACP provides the financial up-gradation on the basis of stagnation of an employee in the service. The benefit of up gradation under MACP scheme is purely personal. Under the scheme benefit of up-gradation in next grade pay is allowed without any change in designation or powers. The person who gets the benefit remains on the same post but seniors to him cannot get the advantage of up-gradation because they have either earned all the three promotion or not stagnating in terms of the scheme of MACP. In such situation, the senior cannot claim for stepping up by enhancing in grade pay.

36. It was further contended that the Judgment of Chennai Bench was considered by Full Bench of Ernakulum Bench in **O.A. No. 1130/2011, J. Leelamma and 88 others Vs. Union of India and others** wherein it was categorically held that Clause- 20 of

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MACP scheme is valid and legal and claim of the applicants of that case (similarly situated as of applicant of this case) was rejected. The judgment of Ernakulum Bench was affirmed by Division Bench of Kerala High Court. As such there are two conflicting judgment and as such the Tribunal can proceed independently on the basis any one of the case which is best suited in the facts and circumstances of the case and of law. The judgments of Madras High Court or of Kerala High Court are not binding on this Tribunal and are simply of persuasive value because there is no judgment on the point in issue is operating the field of the jurisdictional court i.e. of High Court of Calcutta or of Hon'ble Apex Court. It was further contended that the judgment of Madras high court lost its precedential value in view of the order passed by Hon'ble Supreme Court while dismissing the SLP *in limine* with specific use of sentence that "**However, the question of law is left open.**" and as such this Tribunal can decide the case on its own merit.

#### Submission of Counsel for Respondents

37. It has been contended that Full Bench of Ernakulam Bench of 3 Judges has already held the validity of the MACP scheme with regard to controversy in question. The applicants failed to show that any court or Tribunal has ever declared MACP scheme or part thereof ultra virus or invalid. So the courts without declaring the scheme of MACP or it any part thereof ultra virus or invalid cannot ignore the scheme of MACP or any portion thereof. The MACP scheme has statutory forced and part of policy decision of Central Government as such no change is permissible in the scheme especially by the courts which have no power to legislate or frame a policy on behalf of State.

38. He also relied upon an article written by Hon'ble Justice R. Raveendran, a former Judge of Supreme Court and published in Journal Section 2015 (8) SCC under heading "Precedent -Boons or Bane?" where it has been stated that judgment of the jurisdictional Court binds all subordinate Court / Tribunals / authorities within the territorial jurisdiction of High Court but a decision of High court of another State having no territorial jurisdiction over Courts/Tribunal such decision would be of persuasive value.

39. He further relied upon a judgment of **Central Board of Dawoodi Bohra Community Vs. State of Maharashtra 2005 (2) SCC 673**. The constitution Bench summed up the legal position in case of conflict of decision of two benches of equal strength.

40. It has been further contended that rule of judicial propriety ought to have been fully observed in this matter by this Tribunal. The judgment rendered by Chennai Bench in OA No. 966 and 967 of 2010 was referred to in a larger Bench (Full Bench of 3 Judges) decision of Ernakulum Bench of CAT. The Full Bench at Ernakulam has expressed disagreement regarding the correctness of the decision rendered in the aforesaid OA of the Chennai Bench and some other benches and over ruled the law propounded by the Chennai Bench vide its judgment and order dated 22.03.2013 and as such the judgment of Chennai Bench has lost its binding effect. The Full Bench Judgment of Ernakulum Bench was not brought to the notice of Madras High Court and Madras High Court affirmed the judgment of Chennai Bench vide its judgment dated 19.03.2014. It is also equally important and worth notice that the judgment of Ernakulum Bench was also affirmed in Writ petition before Kerala High Court vide its judgment dated 02.06.2015. As such there are two conflict judgment of different High Court and in such situation the Tribunal is not obliged to follow the judgment of Madras High Court. This Tribunal has to decide in such situation in absence of the any judgment of jurisdictional High court which of the two judgments of High Courts should be followed.

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41. The learned counsel for the respondents relied upon full bench judgment of the Calcutta High Court in **Bhola Nath Karmakar Vs. Madan Mohan Karmkar AIR 1988 Cal 1** where it is stated that when two conflictive judgment of equal strength of the benches are placed and the Court required to decide which of them to be followed by Court, in such situation the courts may follow the judgment which is best suited to the facts of the case under decision of the Tribunal and which elaborately discuss the points on issue in accordance with law. He further argued that the judgments of other High Court in absence of judgment of Calcutta High Court are of persuasive value and shall have no bindings force upon this Tribunal in view of Article 226 sub clause (2) of the Constitution.

42. It has been further argued that for the sake of the arguments if it is taken to be correct that the judgments of different High Court are binding upon this Tribunal the matter should have been resolved in accordance with Full Bench judgment rendered by Calcutta High Court in the aforesaid Bhala Nath Karmakar case and as such the Tribunal has to decide which of two case the Tribunal should follow in the facts and circumstance of the case. He also relied upon a judgment of Supreme Court in this regard rendered in **Indian Petro Chemicals Corporation Ltd. Vs. Shramik Sena 2001 (7) SCC**

43. It was further argued by learned counsel for the respondents that the applicants being central government employee have already accepted the benefit of their pay fixation in accordance with the Revised Pay Rules 2008 and as such they had already accepted the correctness of the rules framed by the central government in regard of recommendation of 6<sup>th</sup> CPC. And as such they are now estopped to say that any part of scheme of 6<sup>th</sup> CPC accepted by Central government is not valid as the same is not beneficial to them.

44. Learned counsel for the respondents further argued that no court has yet declared the scheme of MACP ultra virus or invalid. Even the Madras High Court on its own judgment has not finds the MACP Scheme *ultra vires* and as such not withdrawn the benefit of up gradation given to the private respondents under MACP scheme.

45. It was further contended that MACP scheme prohibits stepping up of the employees who are getting lesser salary with those who get advantage of upgradation under MACP scheme as is evident from para- 10 of letter dated 19/05/2009. Revised pay Rules of 2008 regarding pay fixation also provides that anomaly in fixation of pay in the light of the rules framed in pursuance of acceptance of recommendation of 6<sup>th</sup> CPC can be resolved in view of Rule-7 and this anomaly can be removed only once and that too at the time of fixation of pay in accordance with rules in new pay band and grade pay. The subsequent increase in the light of para-20 of MACP scheme does not amounts to anomaly and cannot be resolved under FR-22 in view of Rule-15 of 2008 Rules.

46. Counsel for the respondents further argued that some of the applicants, are on the date of filing of OA, were working on the promoted post of AO which was carrying the GP of RS. 5400/- and as such their claim cannot be entertain.

47. It was further contended by counsel for the respondents that for the sake of argument if any disparity in the pay of seniors being less than the junior, the up-gradation may be granted to the applicant by equalizing the pay individually on case to case basis by given the difference of pay as special pay to the junior and not by equalizing the GP.

48. It was further contended by learned counsel for the respondents that the Karnatka High Court after following the judgment of Madras High Court granted the

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benefit to the applicants of that case of upgradation not from the date of grant of financial upgradation to the private respondents but from the date of judgment of the Madras High court. The correctness of the judgment of Karnataka High Court was assailed before Hon'ble Supreme Court in SLP. The order of Hon'ble Karnataka High Court was stayed and after condoning the delay for presenting the SLP notices were also issued to the respondents. As such on this ground too it has been contended that correctness of Madras High Court judgment is under consideration and secondly that in case this Tribunal finds that if any benefit has been extended in the light of Madras High Court judgment to the applicants, the same cannot be granted prior to date of institution of the case. It was further argued that though the SLP has been admitted and Interim order has been passed by Hon'ble Supreme Court against the aforesaid judgment of High Court of Karnataka but judgment of Kerala High Court has attained the finality. On the basis of that judgment of Kerala High Court the Principal bench of Delhi and Chandigarh benches of CAT has decided that the benefit of up-gradation of Grade pay cannot be extended to the applicants of those cases on the basis of grant of financial up-gradation granted to the private respondents based on stagnation on a particular post under MACP scheme. In this regard he has placed the judgments of Principal Bench and Chandigarh Bench on record.

49. The grant of benefit of MACP to the applicants is not only against notes 10 of rule-7 of revised pay rules as well as against the spirit of FR-22. It was further contended that no mandamus can be issued by any Court/Tribunal against the state to act contrary to law.

50. On these ground counsel for the respondents prayed for dismissal the petition.

#### Discussion

51. Before further proceeding with the matter, we would like to see the judgment delivered by Full Bench of Ernakulum Bench of CAT which has been referred in judgment of OA No.436 of 2015 passed by PB of CAT. We have gone through the judgment and found that above mentioned judgment delivered by Chennai Bench and relied upon by the applicant, and other conflicting judgements delivered by other benches of CAT were considered by the full bench and arrived at the conclusion that para 20 of MACP is legal and valid. The benefit of up gradation under MACPS is purely personal. The relevant excerpts of the judgment of Ernakulum Bench are quoted herein below;

*"This Full Bench has been constituted in view of the fact that there are conflicting decisions of Division Benches of This Tribunal in respect of issue involved in this OA.*

*(2). Briefly stated, the applicants in this OA are either serving or retired Assistant Accounts Officers (Gazetted Officers) in the Pay Band of Rs 9300 - 34800 with Grade Pay of Rs 4,800 of the Principal Accountant General (A & E) Kerala. They had initially joined the organization as Clerk/Typist in mid 1986. Seniors amongst the applicants were promoted as Accountants and then as Senior Accountants. On their passing the Section Officers Grade Examination they were appointed on ad hoc basis as Section Officers and later promoted as Assistant Accounts Officers. The other officers were also promoted with the only difference that from Section Officers to Asst. Accounts Officers, it was on account of unification of the two posts that they had been designated as Asst. Accounts Officers w.e.f 01-01-2006.*

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6. The applicants have compared their case with that of a junior Shri R. Chandran to hammer home their point that the said officer had been junior throughout and had been drawing less pay than the

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applicants as could be seen from Annexure A-2 statement but by virtue of grant of III MACP he had stolen a march over the applicants.

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15. Irrespective of clause 20, if the scheme of financial upgradation is applied to the facts of the case of the applicants, admittedly, they having already enjoyed three promotions, i.e. from Clerk/Typists to Accountants and then as Senior Accountants and thereafter, as Section Officers/Asst. Accounts Officers, the first condition of non promotion is not fulfilled by them. Thus, there is no scope of them being brought within the fold of the MACP Scheme. To this extent the case is decided against the applicants.

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25. In view of the above, while declaring that clause 20 of the MACP scheme is fully valid and legal and while rejecting the claim of the applicants for financial up gradation under the MACP Scheme at par with the junior."

52. The order of Ernakulum Bench of CAT has been affirmed by a Division Bench of Hon'ble Kerala High Court in O.P.No.58 of 2015 by order dated 02.06.2015, the relevant portion of order is quoted herein below;

"After evaluating the merit involved, the Tribunal held that Clause 20 of the MACP Scheme was fully valid and legal, making it clear that same would not stand in the way of the petitioners to have their grievance redressed by resorting to administrative machinery.

In the above circumstances, we do not find any reason to call for interference with the verdict passed by the Tribunal!"

53. It is worth notice that the decision of CAT Chennai bench in OA No. 966 and 967 of 2009 was considered by a Full Bench (Three Judge Bench) of Ernakulum Bench of CAT in OA No.1103 of 2011 decided on 22.3.2013. The Full Bench rejected the claim of applicants in OA. No. 1103 of 2011 for financial up-gradation under MACP scheme at par with their juniors. The reference of OA.No.1103 of 2011 of Ernakulum Bench of CAT is made in para 7 of the judgment of Principle Bench in OA No. 436 of 2015, decided on 26.11.2015.

54. The moot question for deciding the matter is;  
 Whether the decision rendered by Chennai Bench (CAT) in O.A. No.966-967 of 2009 on 29<sup>th</sup> December, 2010 have a binding effect upon this Tribunal?

55. So far as the factual matrix is concern the Full Bench of Ernakulum Bench of this Tribunal rendered its judgment after examining the aforesaid Division Bench judgment of Chennai Bench in OA No.966-967 of 2009 .The Ernakulum Full Bench disagreeing with Chennai Bench and other division benches of this Tribunal ruled that MACP Scheme is valid and legal. The judgment of Full Bench rendered by Ernakulum Bench of this Tribunal was affirmed by Kerala High Court as stated herein above.

56. The Chennai Bench of CAT and Madras High Court has held that the applicants are entitled to stepping up in the form of enhancement of grade pay. On the contrary, the Kerala High Court ruled that the financial up-gradation under MACP scheme is

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purely personal and if an employee has already get three promotions he cannot get an advantage of MACP scheme in the form of financial up-gradation.

57. The constitution Bench of Hon'ble Supreme Court in the Judgment of **L. Chandra Kumar Vs. Union of India and Ors (AIR 1997 SC 1125)** ruled that the decision rendered by any Bench of CAT would subject to judicial scrutiny by High Court under Article 226 read with 227 of Constitution. Therefore, the decision rendered by any Bench of CAT would subject to judicial scrutiny by High Court having territorial jurisdiction over such Bench of CAT.

58. The consequence of the decision of Constitution Bench in L Chandra Kumar is that unity of different benches of CAT stands broken and benches falling within the territorial jurisdiction of any High Court come within the superintendence of that particular High Court under article 226 and 227 of Constitution. As such the judgment rendered by the particular High Court become binding upon all the benches of the Tribunal in view of Article 226(2) and 227.

59. Under such situation if any High Court passed any order of affirming or setting aside the decision of CAT falling under the territorial jurisdiction of such High Court that decision of High Court shall be bindings over all the benches of Tribunal falling within the territorial jurisdiction of particular High Court. Any such judgment rendered by High Court will be the judgment delivered by jurisdictional High Court.

60. It is also well settled that judgment rendered by any other High Court (except the jurisdictional High Court) on a particular point would be of persuasive value. If there are conflicting judgments of different High Court on any point, in absence of any decision on such points of the jurisdictional High Court, would be of persuasive value and Tribunals in such situation would pass the order on merit of its own case and can take help of any judgment which is most suitable in the facts and circumstance of the particular case.

61. If the binding decision of the respective High Court is subject matter of SLP and SLP is dismissed by the Supreme Court without assigning any reason, in such situation the decision of State High Court will be the binding decision. **Hon'ble Mr. Justice R. Raveendran**, the former judge of Supreme Court in his article "**Precedent- Boon and Bane?**", reported in **Journal section of (2015) 8 SCC** stated that when the order of Supreme Court rejecting the SLP without assigning any reason, the same would not be the declaration of law within the meaning of Article 141 of Constitution. The doctrine of merger would not apply in such situation.

62. So far as the question of law propounded with regard to conflicting judgments of Courts are concerned the different decision rendered by Supreme Court and Full Benches of different High Court would be of greater importance for deciding the controversy involved in this case.

63. It appears that the Full Bench decision of the Madras High Court in **R. Rama Subbarayalu v. Rengammal, AIR 1962 Mad 450**, held that "*where the conflict is between two decisions pronounced by a Bench consisting of the same number of Judges, and the subordinate Court after a careful examination of the decisions came to the conclusion that both of them directly apply to the case before it, it will then be at liberty to follow that decision which seems to it more correct, whether such decision be the later or the earlier one*".

64. The Nagpur High Court also in its Full Bench decision in **D.D. Bilimoria v. Central Bank of India, AIR 1943 Nag 340** in case of conflicting authorities, the High Court held "*the result is not that the later authority is substituted for the earlier,*

but that the two stand side by side conflicting with each other", thereby indicating that the subordinate Courts would have to prefer one to the other and, therefore, would be at liberty to follow the one or the other.

65. The Allahabad High Court in **Ganga Saran vs. Civil Judge AIR 1991 Allahabad 114 FB** ruled that if there is a conflict between two decisions of different Benches of equal strength and is not be possible to reconcile, the court must follow the judgment which appears to them to state the law accurately and elaborately.

66. The law of precedent in respect of conflicting judgments of bench of equal strength has also been considered in a full bench judgment delivered by jurisdictional High Court for this Tribunal working at Kolkata, the Calcutta High Court in **Bhola Nath Karmakar Vs. Madan Mohan Karmakar (AIR 1988 Calcutta 1)**. The Calcutta High Court while deciding the aforesaid case faced the most embarrassing and uncomfortable situation when two contradictory decisions of Hon'ble Supreme Court rendered by the equal strength were placed before High Court to decide as to which one they are bound and entitled to follow. The Hon'ble High Court after considering the ration of judgment delivered by 5 Judges Bench of Hon'ble Supreme Court in **Atma Ram Vs. State of Punjab AIR 1959 SC 519** and following another judgment of Punjab & Hariyana High Court in **Indo-Swiss Time Ltd. vs. Umarao (AIR 1981 P&H 213 FB)** ruled that in case there is a conflict between the judgments of Supreme Court constituted of equal strength of benches the incidence of time would not be a relevant factor. The High Court must follow the judgment which according to it, is better in point of law and which appears to the Court to state the law accurately or more accurately than the other conflicting judgment. Relevant portion of the judgment of Full Bench in Bhola Nath Karmakar's case supra is extracted herein below for ready reference:

*"18.----- We are, however, inclined to think that no blanket proposition can be laid either in favour of the earlier or the later decision and, as indicated hereinbefore, and as has also been indicated by the Supreme Court in Atma Ram (Supra), the subordinate Court would have prefer one to the other and not necessarily obliged, as a matter of course, to follow either the former or the later in point of time, but must follow that one, which according to it, is better in point of law. As old may not always be the gold, the new is also not necessarily golden and ringing out the old and bringing in the new cannot always be an invariable straight-jacket formula in determining the binding nature of precedents of co-ordinate jurisdiction."*

67. The Hon'ble Supreme Court to avoid the situation of conflict of the judgments in a Constitution Bench judgment in **Central Board of Dawoodi Bohra Community Vs. State of Maharashtra 2005 (2) SCC 673**, summed up the legal position in the following terms:

*"(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.*

*(2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co-equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co-equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger*

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than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions: (i) The above said rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing."

68. In **Safiya Bee V Mohd. Vajahath Hussain, (2011) 2 SCC 94** the Hon'ble Apex Court ruled that the above principles and norms stated with reference to the Supreme Court are equally relevant and applicable to the High Court also.

69. The Hon'ble Supreme court in **Indo Petro Chemicals Corporation Ltd. Vs. Shramik Sena 2001 (7) SCC 469** ruled that when any High Court is faced the dramatically opposite interpretation of the judgment of the Supreme Court it was expected of the High Court to decide the case on merit according to his own interpretation of the said judgment. The High court should not order to the parties to approach the Apex Court for seeking the clarification.

70. The judgment of the High Court having territorial jurisdictional of over the Tribunal have bindings force. The judgment of Madras High Court is of persuasive value and have no binding effect and in this regard the learned Counsel for the respondents relied upon a judgment of **CIT Vs. GM stainless steel Pvt. Ltd. 2003 (11) SCC 441** wherein it was held that revenue authority within the state cannot refuse to follow the decision of jurisdictional High Court on the grounds that decision of some other High court was pending disposal before Hon'ble Supreme Court. The Tribunal / Revenue authorities are bounds by the judgment of jurisdictional of the High Court. Relevant para 9 of the judgment is quoted as under;

"9. Apart from the language of Section 263 of the Income Tax Act, if we were to accept the submission of the appellant that the Revenue Authorities within the State could refuse to follow the jurisdictional High Court's decision on the ground that the decision of some other High Court was pending disposal by this Court, it would lead to an anarchic situation within the State. If at the time when the power under Section 263 was exercised the decision of the jurisdictional High Court had not been set aside by this Court or at least had not been appealed from, it would not be open to the Commissioner to have proceeded on the basis that the High Court was erroneous and that the assessing officer who had acted in terms of the High Court's decision had acted erroneously."

71. The parties unable to bring on record any authority of Hon'ble Calcutta High Court (Jurisdictional High Court) or of the Hon'ble Supreme Court wherein the Scheme of MACP introduced in the light of 6<sup>th</sup> Central Pay Commission (CPC) or any part thereof was declared unconstitutional.



*(Signature)*

72. In view of discussion made here in above the judgment rendered by the Chennai Bench of CAT in O.A.No.966-967 of 2009 would not be of binding effect of this tribunal for the following reasons;

1. The aforesaid Judgment of Chennai Bench regarding grant of benefit of MACP by up-gradation granting grade pay of Rs.5400/- even after getting 3 promotions to the employees was considered by Full bench of Ernakulam Bench of CAT under reference in OA No.1103 of 2011 and Full bench by its order dated 22.3.2013 ruled that para 20 of MACP scheme is valid and legal. The employee already got 3 promotions cannot get the advantage of up-gradation under MACP scheme. As such the judgement of Chennai Bench has been overruled by Full bench.
2. That the judgment of Full bench was affirmed by a Division Bench of Kerala High Court in OP (CAT) No.58 of 2015 by its judgment dated 02.06.2015. The judgment becomes final.
3. As such the judgement of Full Bench of Ernakulam CAT has a binding effect to all benches of CAT in view of decision on reference.

73. Now the question arises as to what would be the precedential value of Judgment rendered by Division Bench of Madras High Court in writ petition No. 18611-18612 of 2011 delivered on 19.03.2014 in relation to the present Full Bench of CAT at Kolkata.

74. The aforesaid judgment of Madras High Court affirmed the judgment of Chennai Bench after full bench judgment of Ernakulam Bench and that to without taking any note of full Bench judgment of Ernakulam Bench whereby the judgment of Chennai bench was overruled. It is true that SLP filed against that judgment was dismissed in *limine* with remark making law point open. In such situation, the judgment of Madras High Court would not merge in the judgment of Hon'ble Supreme Court. In such situation it cannot be said that Hon'ble Supreme Court put its seal of correctness of judgment of Madras High Court. The net result of the same is that the judgment of Madras High Court will not bind this Tribunal at Kolkata in view of Article 226 (2) of Constitution and is only of persuasive value.

75. It is true that in absence of any judgment of jurisdictional High Court the aforesaid judgment may to some extent may have binding effect upon this Tribunal, but in the light of judgment of Kerala High Court, and contradictory judgment to the judgment of Madras High Court, This Tribunal at Kolkata is under legal obligation to decide the case on its own merit and may rely upon ratio of any of these two judgments which suits to the facts and circumstances of the present case.

76. Now this Full Bench will decide the refereed questions one by one.

iv) **Whether a question of law kept open by the Hon'ble Apex Court could be examined de novo by a Tribunal discarding a view already taken on the issue by the Hon'ble High Court;**

The decision on this question is not at all necessary for deciding this case hence the same has not been discussed in detail. It would be suffice to say that the question of law was left open by Hon'ble Supreme Court while dismissing the SLP in *Liminie* without assigning any reason, the doctrine of merger will not apply and judgment of Madras High Court will not merge in the judgment of Supreme Court. The

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precedential value of the Judgment of Madras High Court for this bench has already been discussed at length, therefore no further interpretation is required.

- i) The legality, propriety as also the constitutional validity of grant of MACP in the higher Grade Pay to the Sr. Auditors beyond their normal entitlement on promotion in the hierarchy;

In view of discussion made herein above we have held that the judgment of Chennai Bench is not binding in view of Full bench decision of Ernakulam Bench. Full Bench at Ernakulam had held that if an employee had already enjoyed three promotions, the first condition of non promotion is not fulfilled as such there is no scope of grant the benefit of the MACP scheme to such employees.

Secondly if an employee has not been granted three promotions and the employee on post last held is stagnating but not completed 10 years of his stagnation on that post such an employee too shall not get non- functional financial up-gradation as is admissible in the MACP scheme due to non fulfillment of condition of stagnation for 10 years.

The Full Bench also held that clause 20 of the MACP scheme is fully valid and legal.

The private respondents stagnating on the post of senior Auditors were rightly granted 3<sup>rd</sup> up-gradation of G.P. of Rs.5400/- after completion of 30 years service in accordance with MACP Scheme. The correctness for grant of benefit of MACP Scheme to them has not been challenged by the applicants or by the official respondents.

- ii) The correctness of applying the principle of stepping up apply to a senior in promotional post when junior in a feeder post by virtue of MACP is bestowed with higher grade pay than such senior i.e. to a case where the "senior" and "junior" do not belong to the same post with same scale of pay with similar entry points;

And

- iii) Whether stepping up in this case would attract the provisions of Clause 10 and 20 of MACP scheme itself and whether clause 10 and 20 of MACP scheme would at all apply to a case where the 'senior' holding a higher post with higher scale of pay and Grade Pay became subsequently and the 'juniors in the feeder post by virtue of MACP scheme would be getting higher Grade Pay than such 'seniors' when such 'senior' and 'junior' do not belong to the same post with same scale of pay and Grade Pay;

And

- v) Accordingly, whether the AAOs would be entitled to stepping up or grant of higher Grade Pay on par with the Sr. Auditors who marched ahead of them in the matter of Grade Pay by virtue of grant of MACP;

And

- vi) If not, what is the remedy available to the AAOs

As all these issues relate to stepping up, therefore they are taken together for discussion and decision.



77. It is well settled proposition of law that regulating the recruitment and conditions of service including fixing pay and other monetary benefits of the Government Servants is the prerogative of the appropriate Government. The appropriate Government in this regard can frame the statute, Rules and regulation powers conferred under part XIV of Constitution of India. The appropriate Government may also have a right to amend, vary, revoke the conditions of services in respect of remuneration, leave etc of the Government Servants. The Hon'ble Supreme Court ruled in **Sect., Finance Deptt. v. W.B. Registration Service Assn., 1993 Supp (1) SCC 153 at page 165**

*12. .... it is well settled that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commissions, etc. But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction. .... There can, therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and Court's interference is absolutely necessary to undo the injustice."*

78. It is not in dispute that recommendation of 6<sup>th</sup> Pay Commission once accepted by Central Government and converted into rules in pursuance of article 309 and chapter XIV of Constitution, the same shall be of statutory force. In such a way a subordinate legislation could be made like MACP scheme. The same would also be binding like rules framed under constitution. This Tribunal thus, cannot issue any direction contrary to rules framed by Central government after acceptance of recommendation of 6<sup>th</sup> CPC without declaring the same ultra vires. The Hon'ble Supreme Court in **State of W.B. v. Subhas Kumar Chatterjee, (2010) 11 SCC 694 at page 698 in para 14 held**

*"14. This Court time and again cautioned that the court should avoid giving a declaration granting a particular scale of pay and compel the Government to implement the same. Equation of posts and equation of salaries is a matter which is best left to an expert body. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. Even the recommendations of the Pay Commissions are subject to acceptance or rejection, the courts cannot compel the State to accept the recommendations of the Pay Commissions though it is an expert body. The State in its wisdom and in furtherance of its valid policy may or may not accept the recommendations of the Pay Commission. (See Union of India v. Arun Jyoti Kundu [(2007) 7 SCC 472 : (2007) 2 SCC (L&S) 695] and State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. [(2002) 6 SCC 72 : 2002 SCC (L&S) 822] ) It is no doubt true, the constitutional courts clothed with power of judicial review have jurisdiction and the aggrieved employees have remedy only if they are unjustly treated by arbitrary State action or inaction while fixing the pay scale for a given post.*



79. In para 30 and 31 of the judgment in **Subhas Kumar Chatterjee's case** (Supra) the Apex Court further held;

*"30. Yet another question that arises for our consideration is whether a writ of mandamus lies compelling the State to act contrary to law? The State Government having accepted the recommendations of the*

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successive Pay Commissions gave effect to those recommendations by framing statutory rules being the ROPA Rules and scales of the employees have been accordingly fixed. The respondents did not challenge the vires of the said Rules under which they were entitled to only a particular scale of pay. The State Government is under obligation to follow the statutory rules and give only such pay scales as are prescribed under the statutory provisions. Neither the Government can act contrary to the rules nor the court can direct the Government to act contrary to rules. No mandamus lies for issuing directions to a Government to refrain from enforcing a provision of law. No court can issue mandamus directing the authorities to act in contravention of the rules as it would amount to compelling the authorities to violate law. Such directions may result in destruction of rule of law.

31. In the instant case, the impugned order of the High Court virtually compelled the State to give pay scales contrary to the statutory rules under which pay scales of the employees are fixed. The decision of the Chief Engineer being contrary to the ROPA Rules, 1998, cannot be enforced even if such a decision was taken under the directions of the Administrative Tribunal. The orders of the Tribunal as well as of the High Court suffer from incurable infirmities and are liable to be set aside.

80. So far stepping up of Grade Pay of Rs.5400/- as has been given by the Chennai Bench to the seniors already got three promotions by virtue of grant of benefit under MACP is not permissible in the light of scheme of MACP. The similar view has been propounded by Full bench of Ernakulum Bench. There is a specific bar as contained in para 10 of letter dated 19.05.2009 by which the MACP Scheme was introduced. For ready reference once again the para is quoted herein below;

10. No stepping up of pay in the pay band or grade pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACP Scheme.

81. Concept of stepping up in 6<sup>th</sup> CPC has been introduced in rule 7 of Revised Pay Rules 2008. Note 10 to Rule 7 provides that where the pay of junior is initially fixed at the time of fixation of pay in the light of 6<sup>th</sup> CPC and the same is higher than his senior, the anomaly may be removed by giving hike in pay of senior to the extent of difference of pay to the senior in accordance with provisions of Note 10. But if the pay hike is due to grant of non functional financial up gradation on account of stagnation of an employee under MACP scheme that hike in pay will not attract stepping up in view of specific provisions contained in clause 16,17,18,19 and 20 of MACP Scheme.

82. As the claim in this OA of applicants is fully based on the judgment of Chennai Bench as upheld by Madras High Court, which in our opinion is not sustainable as discussed here in above, therefore stepping up by grant of G.P. of Rs.5400/- to the applicants is not permissible under the MACP scheme.

83. We are of further view that in any case, if there is a difference in total pay received by junior or senior at the most the amount of difference in pay could be made good by giving that amount of difference of pay and not by equalizing the grade pay, because the possibility of this fact may not be ruled out that by equalizing Grade pay the senior may get more than that pay which the junior was getting. Such a situation is neither available in FR. 22 or in Note 10 of Rule 7 of CCS9 Revision of Pay) Rules 2008.

*(Signature)*

84. However if the applicants otherwise entitled to equalizing of their pay with the pay of private respondents under any other service rule subject to rule 15 of CCS (Revision of Pay) Rules 2008, they may raise their grievances through administrative machinery as observed in the Full Bench decision of Ernakulum Bench but not under the MACP Scheme. Therefore, we refrain ourselves from making any comment with regard to any other remedy available to the applicant under any other service Rules applicable to the applicants.

**Conclusion**

85. In this case some of the applicants were directly recruited on the post of clerk and some of them on the post of Auditors. Some of the applicant on the date of filing of this O.A. were working on the post of A.O and were already getting G.P. of Rs. 5400/-

86. It is not in dispute that those recruited and inducted in service as clerk, they before reaching the post of AAO must have got three promotions. This situation is not in dispute at bar. Hence, question of further upgradation of pay under MACP does not arise as discussed elaborately above.

87. It has been contended that applicant, those inducted as auditors as direct recruit have got only two promotions as the post of SO(A) and AAO stand merged in 6<sup>th</sup> CPC. If it is true those applicant cannot get Grade pay of Rs.5400/- automatically. If any such applicant is stagnating and entitled the benefit of 3<sup>rd</sup> MACP, he may claim the same through administrative machinery strictly as per MACP Scheme and not through under this O.A.

88. So far as applicants who are working on the post of A.Os and drawing G.P. of Rs.5400/- on the date of presentation of this OA, would also not entitled to any up-gradation as they are already in G.P.5400/-

89. As the benefit of judgment of Chennai Bench in OA Nos.966-967-2009 (affirmed in writ Petition No.18611-18612 of 2011by Madras High Court) cannot be extended to the applicants of this OA as decided by us this OA deserves to be dismissed.

90. Consequently, This OA is dismissed. While rejecting the claim of the applicants for financial up-gradation of G.P. of Rs.5400/- under the MACP Scheme at par with the juniors, liberty is granted to the applicants to have their grievances redressed through administrative machinery for equalization of pay, if permissible under other service rules applicable to the applicants

91. Considering the facts and circumstances of this case there shall be no order as to costs.

*(Signature)*  
(Jaya Das Gupta)  
Member (Admn.)

*(Signature)*  
(A.K.Patnaik)  
Member (Judl.)

*(Signature)*  
(Justice V.C.Gupta)  
Member (Judl.)

JNS

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25/11/18  
*(Signature)*

(a) Sl. No. of the apph... 311  
(b) Name of the apph... S. Pal. Adv.  
(c) Dt. of presentation of application for copy... 18/11/18  
(d) No. of pages... 36  
(e) Copying fee charged... Free  
(f) Dt. of preparation of copy... 25/11/18  
(g) Dt. of delivery of copy to the applicant... 25/11/18