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

No. PC-V/2021/CC/Judgments

New Delhi, dt. 14 -12-2022

The General Manager (P)
All Indian Railways / PUs

Sub: Sharing of information regarding favourable judgment.

Please find enclosed the judgment dated 22-8-2022 of the Hon'ble Supreme Court of India disposing off Civil Appeal No. Nil of 2022 (arising out of Special Leave Petition (Civil No. 16442 of 2021) in the matter of Union of India and ors. Vs. Ex. HC/GD Virender Singh with a bunch of Civil Appeals involving the identical issue. Hon'ble Court rejected the claim of the respondents reiterating its stand in R. K. Sharma (supra) case that MACPS should not be applicable from 01-01-2006 observing that the benefits flowing from ACP & MACP Scheme were held to be in the nature of incentive schemes to relieve stagnation and are not part of pay structure. Moreover, on the aspect of grant of financial upgradation under MACPS in the scale/grade pay of the next promotional post in the hierarchy, Hon'ble Supreme Court observed that this is covered by the decision of Apex Court in *Union of India and Others vs. M. V. Mohanan Nair* that entitlement of financial upgradation would be equivalent to the immediate next higher Grade Pay in the hierarchy of the recommended revised Pay Bands and Grade Pay as given in Section 1, Part A of the First Schedule to the Central Civil Services (Revised Pay) Rules, 2008/Railway Services (Revised Pay) Rules, 2008.

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

3. Please acknowledge the receipt of this letter.

DA: As above.

14/12/2022

(Sudha A Kujur)
Dy. Director, Pay Commission,
Railway Board.

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

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 16442 OF 2021)

UNION OF INDIA AND OTHERS ..... APPELLANTS

VERSUS

No. PC-V/2021/CC/Judgements (Computer No. 3359185)
EX. HC/GD VIRENDER SINGH ..... RESPONDENT

WITH

CIVIL APPEAL NO. OF 2022
ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022
(DIARY NO. 14322 OF 2020)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 16065 OF 2021)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO.16179 OF 2021)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 4279 OF 2022)

CIVIL APPEAL NO. 1592 OF 2021

CIVIL APPEAL NO. OF 2022
ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022
(DIARY NO. 19618 OF 2020)

CIVIL APPEAL NO. 1600 OF 2021

CIVIL APPEAL NO. OF 2022
ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022
(DIARY NO. 19905 OF 2020)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 11603 OF 2020)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO.12597 OF 2020)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 11924 OF 2020)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 11663 OF 2020)

CIVIL APPEAL NO. 1597 OF 2021

No. PC-V/2021/CC/Judgements (Computer No. 3559185)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 13066 OF 2020)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 11899 OF 2020)

CIVIL APPEAL NO. OF 2022
ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022
(DIARY NO. 26590 OF 2020)

CIVIL APPEAL NO. OF 2022
ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022
(DIARY NO. 15702 OF 2021)

CIVIL APPEAL NO. 1603-1609 OF 2021

CIVIL APPEAL NO. OF 2022
ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022
(DIARY NO. 16220 OF 2020)

CIVIL APPEAL NO. OF 2022
ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022
(DIARY NO. 17489 OF 2020)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 11679 OF 2020)

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(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 12110 OF 2020)

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(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 12092 OF 2020)

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(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 11858 OF 2020)

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(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 3775 OF 2021)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 4012 OF 2021)

CIVIL APPEAL NO. OF 2022
ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. ____ OF 2022
(DIARY NO. 4311 OF 2021)

No. PC-V/2021/CC/Judgements (Computer No. 3359185)

CIVIL APPEAL NO. OF 2022
ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022
(DIARY NO. 4350 OF 2021)

CIVIL APPEAL NO. OF 2022
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(DIARY NO. 4357 OF 2021)

CIVIL APPEAL NO. OF 2022
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(DIARY NO. 4362 OF 2021)

CIVIL APPEAL NO. OF 2022
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(DIARY NO. 4359 OF 2021)

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(DIARY NO. 4405 OF 2021)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 4118 OF 2021)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 4065 OF 2021)

CIVIL APPEAL NO. OF 2022
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(DIARY NO. 4918 OF 2021)

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(DIARY NO. 4920 OF 2021)

CIVIL APPEAL NO. OF 2022
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(DIARY NO. 4921 OF 2021)

CIVIL APPEAL NO. OF 2022
ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022
(DIARY NO. 4926 OF 2021)

CIVIL APPEAL NO. OF 2022
ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022
(DIARY NO. 4928 OF 2021)

No. PC-V/2021/CC/Judgements (Computer No. 3359185)

CIVIL APPEAL NO. OF 2022
ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022
(DIARY NO. 4933 OF 2021)

CIVIL APPEAL NO. OF 2022
ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022
(DIARY NO. 4938 OF 2021)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 4011 OF 2021)

CIVIL APPEAL NO. OF 2022
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(DIARY NO. 4966 OF 2021)

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(DIARY NO. 4975 OF 2021)

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(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 4407 OF 2021)

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(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 3833 OF 2021)

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(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 4493 OF 2021)

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(DIARY NO. 5031 OF 2021)

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(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 3830 OF 2021)

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(DIARY NO. 5041 OF 2021)

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(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 4015 OF 2021)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 5018 OF 2021)

No. PC-V/2021/CC/Judgements (Computer No. 3359185)

CIVIL APPEAL NO. OF 2022
ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022
(DIARY NO. 5916 OF 2021)

CIVIL APPEAL NO. OF 2022
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(DIARY NO. 5954 OF 2021)

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(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 6057 OF 2021)

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(DIARY NO. 4972 OF 2021)

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(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 6082 OF 2021)

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(DIARY NO. 4934 OF 2021)

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(DIARY NO. 4993 OF 2021)

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(DIARY NO. 4924 OF 2021)

CIVIL APPEAL NO. OF 2022
ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022
(DIARY NO. 4989 OF 2021)

No. PC-V/2021/CC/Judgements (Computer No. 5359185)

CIVIL APPEAL NO. OF 2022
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(DIARY NO. 8463 OF 2021)

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CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 8727 OF 2021)

No. PC-V/2021/CC/Judgements (Computer No. 3359185)

CIVIL APPEAL NO. OF 2022
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CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 11738 OF 2020)

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CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 10921 OF 2021)

CIVIL APPEAL NO. OF 2022
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(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 11419 OF 2021)

CIVIL APPEAL NO. OF 2022
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(DIARY NO. 15753 OF 2021)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 12031 OF 2021)

CIVIL APPEAL NO. OF 2022
ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022
(DIARY NO. 15751 OF 2021)

No. PC-V/2021/CC/Judgements (Computer No. 3359185)

CIVIL APPEAL NO. OF 2022
ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022
(DIARY NO. 15705 OF 2021)

CIVIL APPEAL NO. OF 2022
ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022
(DIARY NO. 15714 OF 2021)

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ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022
(DIARY NO. 15700 OF 2021)

CIVIL APPEAL NO. OF 2022
ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022
(DIARY NO. 15713 OF 2021)

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(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 11532 OF 2021)

CIVIL APPEAL NO. OF 2022
ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022
(DIARY NO. 15759 OF 2021)

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(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 11700 OF 2021)

CIVIL APPEAL NO. OF 2022
ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022
(DIARY NO. 15712 OF 2021)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 12030 OF 2021)

No. PC-V/2021/CC/Judgements (Computer No. 3359185)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 11048 OF 2021)

CIVIL APPEAL NO. OF 2022
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(DIARY NO. 15532 OF 2021)

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(DIARY NO. 15756 OF 2021)

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(DIARY NO. 15694 OF 2021)

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(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 11542 OF 2021)

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(DIARY NO. 15697 OF 2021)

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(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 12495 OF 2021)

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(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 13493 OF 2021)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 16411 OF 2021)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 13803 OF 2021)

CIVIL APPEAL NO. OF 2022
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(DIARY NO. 18800 OF 2021)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 20257 OF 2021)

No. PC-V/2021/CC/Judgements(Volume-II)/3659185)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 307 OF 2022)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 42 OF 2022)

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(DIARY NO. 26989 OF 2021)

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(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 8721 OF 2021)

CIVIL APPEAL NO. OF 2022
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(DIARY NO. 19614 OF 2020)

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(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 6053-6054 OF 2022)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 9796 OF 2022)

No. PC-V/2021/CC/Judgements (Computer No. 3359185)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 9797 OF 2022)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 5580 OF 2022)

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(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 9795 OF 2022)

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CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 12241 OF 2022)

WRIT PETITION (CIVIL) NO. 561 OF 2022

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 13440 OF 2022)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 13441 OF 2022)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 9118 OF 2022)

No. PC-V/2021/CC/Judgements (Computer No. 3359185)

JUDGMENT

SANJIV KHANNA, J.

Delay is condoned and leave is granted.

2. These appeals by way of special leave raise three issues, all of which are connected and relate to the Modified Assured Career Progression Scheme[1], namely:

(a) Whether the MACP Scheme is applicable and to be implemented with effect from 1st January 2006, the date from which the Central Civil Service (Revised Pay) Rules, 2008 were enforced, or in terms of O.M. dated 19th May 2009 with effect from 1st September 2009?

(b) Whether under the MACP Scheme the respondents are entitled to financial upgradation equivalent to the pay

[1] For short, the 'MACP Scheme'.

scale/grade pay of the next promotional post in the hierarc y, or the immediate next grade pay in the hierarchy of the pay bands as stated in Section 1, Part A of the First Schedule to the Central Civil Services (Revised Pay) Rules, 2008?

(c) Whether the respondents, who belong to the Central Armed Police Forces, are entitled to grant of financial upgradation under the MACP Scheme if for administrative reasons they were unable to fulfil the pre-proportional norms?

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3. The second question is covered by a three Judge Bench decision of this Court in ***Union of India and Others*** v. ***M.V. Mohanan Nair***[2], which judgment explicates the similarities and the difference between the Assured Career Progression Scheme[3], the erstwhile scheme which was replaced by the MACP Scheme. In a nutshell, it can be stated that the MACP Scheme, like the ACP Scheme, is an incentive scheme devised with the object of ensuring that the employees who have stagnated for lack of adequate promotional avenues are given benefit in the form of financial upgradation. The financial upgradation is personal, does not amount to regular or actual functional promotion, and does not require creation of a new post. It has no relevance to the seniority position and principles of

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[2] (2020) 5 SCC 421

[3] For short, the 'ACP Scheme'

reservation are not applicable. Financial upgradation is granted to only those employees who have not received actual or functional promotion even after completion of the requisite service period, though otherwise, they fulfil the prescribed conditions for promotion[4]. Having said so, the ACP Scheme and the MACP Scheme differ significantly. Under the ACP Scheme, a government servant is entitled to financial upgradation on completion of 12 and 24 years of her/his regular service, to the pay scale of the next promotional post in the hierarchy. Under the MACP Scheme, an employee is entitled to three financial upgradations on completion of 10, 20 and 30 years of regular service to the next higher grade pay in the hierarchy of the pay bands and grade pay as given in Section 1, Part A of the First Schedule of the Central Civil Services (Revised Pay) Rules, 2008.

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4. The difference between the two Schemes, and in the form of financial upgradation, has been lucidly explained by this Court in ***M.V. Mohanan Nair*** (supra) by observing that the MACP Scheme has been implemented after due deliberation and on consideration of the recommendations made by the Sixth Central Pay Commission to bring systematic changes in the erstwhile ACP

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[4] For upgradation under the MACP Scheme, the benchmark of 'good' and 'very good' is applicable till the grade pay of Rs.6600/- in pay band 3 and for grade pay of Rs.7600/- and above, respectively.

Scheme so that all employees, irrespective of the existing hierarchical structure in their organisations/cadres, get identical financial benefit of the next immediate grade pay instead of the pay/grade pay applicable to the next promotional post. The MACP Scheme puts an end and rectifies the problem arising from inter-departmental disparities *in re* the pay scales of the next promotional post. The objective of the change is analysed and decoded in ***M.V. Mohanan Nair*** (supra), in the following words:

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> "29...Under the MACP Scheme, financial upgradations are granted at three regular intervals on completion of 10-20-30 years of service without promotion. Hence, it is also intended to ensure that the employees are adequately incentivised to work efficiently despite not getting promotion for want of promotional avenue. The change in policy brought about by supersession of the ACP Scheme with the MACP Scheme is after well-deliberated and well-documented recommendations of the Sixth Central Pay Commission. Considering the various issues in the implementation of the ACP Scheme, the Pay Commission expressed its views "the only other way is to bring systematic changes in the existing Scheme of ACP so that all the employees irrespective of the existing hierarchy structure in their organisations/cadres, get some benefit under it". The Commission therefore, recommended that the existing scheme of ACP be continued with the modifications indicated thereon in the report that the financial upgradation has to be in the next immediate grade pay. One of the reasons for the expert body recommending the MACP Scheme was that there were inter-departmental disparities where several departments had varying promotional hierarchies. As a result, the working of ACP Scheme under which an employee who stagnated for 12 years, was entitled to pay in the pay scale of the next promotional post, led to inter-departmental anomalies. The Pay Commission

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> therefore, recommended MACP Scheme with a view to putting an end to the problem ensuing from inter-departmental disparities.
>
> 30....By perusal of the MACP Scheme extracted earlier, it is seen that the words used in the Scheme are "placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands". The term "grade pay in the next promotional post" is conspicuously absent in the entire body of the MACP Scheme. The argument of the respondents that the benefit of MACP Scheme is referable to the promotional post, is dehors the MACP Scheme and cannot be accepted. Though ACP and MACP Schemes are intended to provide relief against stagnation, both the schemes have different features. Pay scales under the Sixth Pay Commission and the MACP Scheme are stated to be more beneficial since it extends to the employees with time intervals with higher pay bands and various facilities which were not available under the ACP Scheme including the three financial upgradations in shorter time span. In any event, MACP Scheme has not been challenged by the respondents. As rightly contended by the learned ASG, the respondents cannot be permitted to cherry-pick beneficial features from the erstwhile ACP Scheme and also take advantage of the beneficial features in the MACP Scheme.
>
> 31. The object behind the MACP Scheme is to provide relief against the stagnation. If the arguments of the respondents are to be accepted, they would be entitled to be paid in accordance with the grade pay offered to a promotee; but yet not assume the responsibilities of a promotee. As submitted on behalf of Union of India, if the employees are entitled to enjoy grade pay in the next promotional hierarchy, without the commensurate responsibilities as a matter of routine, it would have an adverse impact on the efficiency of administration."

5. The judgment in ***M.V. Mohanan Nair*** (supra) defers to the Sixth Central Pay Commission recommendations as an expert body that

had threadbare examined all the issues, disparities and even representations by employees before making their proposal, which thereafter upon careful consideration was accepted by the government with modifications. The courts would not normally interfere with well deliberated decisions by experts in the field, unless adoption is bad on account of statutory violation, the policy contravenes the overriding constitutional mandate of right to equality, is discriminatory, manifestly arbitrary or negates other fundamental rights. The Executive, by the Constitution, has been conferred the right to choice as it has a duty to discharge, and is responsible and accountable for their action. The court examines the validity challenge, *albeit,* while performing the constitutional duty and exercising the power of judicial review, does not substitute its views on the choice of policy on merits. In fiscal matters, including pay fixation and terms of service, several factors like prevailing financial position, capacity to bear the additional liability are relevant and, therefore, the courts do tread carefully as interference may have serious impact on the public exchequer and have grave financial implications.

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6. In ***M.V. Mohanan Nair*** (supra), the argument to adopt "purposive interpretation" or to apply the principle of *'equal pay for equal work'* for grant of financial upgradation to the pay in the next promotional

post as under the ACP Scheme, viz. financial upgradation to the next grade pay in the hierarchical pay scale, was rejected as financial upgradation cannot be equated with promotion. On merits, it has been held that the financial upgradation envisaged as per the MACP Scheme is not a case of hostile discrimination. The MACP Scheme is not irrational, unjust and prejudicial to a section of the employees, but a well-considered decision which has taken all material and relevant factors into consideration. Prescription of pay scales and incentives are a matter of decision taken by the government which, when based upon the recommendation of an expert body like the Central Pay Commission, should carry weight and the courts should be reluctant to substitute the policy with their own views on what would be more equitable and just. It is to be noted that the MACP Scheme postulates grant of three financial upgradations after a period of 10, 20 and 30 years, whereas the ACP Scheme had postulated grant of only two financial upgradations after a period of 12 and 24 years of regular service. Thus, the claim for grant of financial upgradation in the grade pay of the promotional hierarchy was rejected. Further, with effect from 1st September 2008, the ACP Scheme stands superseded by the MACP Scheme as a matter of government policy and hence, the employees, on and from the date of implementation of the MACP

Scheme, cannot claim any benefit of the ACP Scheme. To hold so, this Court referred to the Joint Committee meetings held on 15th September 2010, 15th March 2011 and 27th July 2012, which were followed by a letter dated 4th November 2013. Minutes of these meetings reveal that some alternatives, including giving of individual option to choose between the ACP Scheme and MACP Scheme, were considered but not favoured as impracticable.

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7. The first question has been answered by this Court in ***Union of India*** v. ***R.K. Sharma and Others***[5] in the following words:

> "8. Ms Madhavi Divan, learned Additional Solicitor General of India appearing for the appellants submitted that this Court in *Balbir Singh Turn* held that payment under the ACPS is a part of the pay structure whereas in a later judgment in *Union of India v. M.V. Mohanan Nair* this Court was of the opinion that both ACP and MACP Schemes are in the nature of incentive schemes. These appeals deserve to be dismissed in terms of the judgment of this Court in *M.V. Mohanan Nair*. The contention of the appellant is that a policy decision was taken to implement the recommendation of the 5th Pay Commission in respect of revised scales of pay and dearness allowance for civilian employees with effect from 1-1-2006 and that revised allowance other than dearness allowance with effect from 1-9-2008. The learned Additional Solicitor General argued that the respondent is entitled to the incentive under the ACP Scheme which was in vogue till 31-8-2008. The respondent cannot seek applicability of MACPS with effect from 1-1-2006. According to the MACPS the financial upgradation is in the higher grade pay in the same pay band whereas financial upgradation as per the ACP Scheme was to the next grade pay of

[5] (2021) 5 SCC 579

promotional post. The learned Additional Solicitor General stated that revision of financial upgradation granted to civilian officers by implementing MACPS from 1-1-2006 would be detrimental to the respondent and other similarly situated persons as huge amounts of money would have to be recovered from them.

9. For a better understanding of the dispute in these cases, it is necessary to examine the judgments of this Court in *Balbir Singh Turn* and *M.V. Mohanan Nair*. The point that was considered by this Court in *Balbir Singh Turn* relates to the applicability of the benefit of MACPS from 1-1-2006. The respondents therein approached the Armed Forces Tribunal which held that the benefit of ACP granted to an employee is part of the pay structure which affects the pay and also his pension. The Armed Forces Tribunal held that an ACP is not an allowance but a part of pay and therefore, in terms of the government resolution, the employees were entitled for MACP with effect from 1-1-2006. This Court in *Balbir Singh Turn* upheld the said finding recorded by the Armed Forces Tribunal. Instructions issued on 30-5-2011 were found to be contrary to the Resolution dated 30-8-2008 as, according to the resolution 1-1-2006 was the effective date for implementation of MACPS in matters relating to pay and dearness allowance.

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10. In *M.V. Mohanan Nair* a three-Judge Bench of this Court considered the ACPS as well as the MACPS to hold that the schemes are in the nature of incentive schemes which were brought into force to relieve stagnation. This Court was of the considered view that the respondents therein were entitled only to the benefit of next grade pay in the pay band and not to the benefit of grade pay of next promotional post. As the MACPS is a matter of government policy pursuant to the recommendations made by the Pay Commission, this Court refused to accept submissions of the employees that MACPS should be made applicable with effect from 1-1-2006.

11. In view of the judgment of this Court in *M.V. Mohanan Nair*, the respondents and other similarly situated employees are entitled for financial

upgradation under MACPS only to the next grade pay and not to the grade pay of next promotional post. It is clear from the Resolution dated 30-8-2008 that the recommendation of the 6th Pay Commission was accepted by the Government and was made effective from 1-1-2006 in respect of civilian employees with regard to revised scales of pay and dearness allowances. Insofar as the revised allowances other than dearness allowance, recommendations of the 6th Pay Commission were given effect from 1-9-2008. The judgment in *M.V. Mohanan Nair* clinches the issue. Benefits flowing from ACP and MACP Schemes are incentives and are not part of pay. The Resolution dated 29-8-2008 is made effective from 1-9-2008 for implementation of allowances other than pay and DA which includes financial upgradation under ACP and MACP Schemes. Therefore, the respondents and other similarly situated officers are not entitled to seek implementation of the benefits of MACPS with effect from 1-1-2006 according to the Resolution dated 29-8-2008. Moreover, the implementation of MACPS by granting financial upgradation only to the next grade pay in the pay band and not granting pay of the next promotional post with effect from 1-1-2006 would be detrimental to a large number of employees, particularly those who have retired. We find force in the submission made by the learned Additional Solicitor General that uniform implementation of MACPS for civilian employees with effect from 1-1-2006 would result in large-scale recoveries of amounts paid in excess."

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8. The aforesaid paragraphs refer to the decision by a three Judge Bench of this Court in ***M.V. Mohanan Nair*** (supra), which we have quoted and referred to above. It also refers to a two Judge Bench decision in the case of ***Union of India and Others*** v. ***Balbir Singh Turn and Another***,[6] which holds that notwithstanding O.M. dated

[6] (2018) 11 SCC 99

19th May 2009 stating that the MACP Scheme would be applicable with effect from 1st September 2008, the MACP Scheme would be applicable with effect from 1st January 2006. The judgment in ***Balbir Singh Turn*** (supra) reasons that the Central Government, on 30th August 2008, had resolved to accept the recommendations of the Sixth Central Pay Commission with regard to the personnel below the officer rank, subject to certain modifications. Reliance was placed upon clause (i) of the Resolution of the Central Government dated 30th August 2008, which reads as under:

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> "(i) Implementation of the revised pay structure of pay bands and grade pay, as well as pension, with effect from 1-1-2006 and revised rates of allowances (except dearness allowance/relief) with effect from 1-9-2008;"

It also refers to clause (ix) of the Resolution which reads as follows:

> "(ix) Grant of 3 ACP upgradations after 8, 16 and 24 years of service to PBORs;"

Thereafter, the judgment in ***Balbir Singh Turn*** (supra) says that the Sixth Central Pay Commission had recommended grant of benefit of the ACP Scheme after 10 and 20 years of service, but the Central Government had decided to grant ACP Scheme after 8, 16 and 24 years of service. Lastly, it holds that perusal of clause (i) of the Resolution dated 30th August 2008 indicates that the Central Government had decided to implement the revised pay scales of pay bands and grade pay, as well as pension, with effect from 1st

January 2006. The second part of the said clause lays down that all allowances, except dearness allowance/relief, will be effective from 1st September 2008. The MACP Scheme, being a part of the pay structure and having effect on the grade pay of the employees, cannot be said to be part of allowances. Benefit of MACP Scheme, if given to employees, would affect their pension and thereby also means that it has to be applied and given effect from 1st January 2006 as it is a part of the pay structure.

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9. As rightly held in ***R.K. Sharma*** (supra), the aforesaid reasoning given in the case of ***Balbir Singh Turn*** (supra), in our opinion, has not been accepted by the three Judge Bench decision in the case of ***M.V. Mohanan Nair*** (supra), which in clear terms holds grant of financial upgradation under the MACP Scheme is not a matter of pay structure, but an incentive scheme brought into force to relieve stagnation which operates on its own terms. We may add that the pay scales are fixed and revised by the rules which are enacted in exercise of powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution of India. Therefore, *vide* Notification dated 29th August 2008, the Central Civil Services (Revised Pay) Rules, 2008 were enacted *vide* G.S.R. No. 622(E). Rule 1(2) states that the Rules, as enacted, shall be deemed to have come into force on 1st January 2006. The aforesaid Rules

neither postulate nor have any provision for grant of financial upgradation under the MACP Scheme. It is to be further noted, and it is an accepted position of both parties, that the MACP Scheme, as implemented, postulates grant of financial upgradation after 10, 20 and 30 years of regular service and not after 8, 16 or 24 years of regular service, as was originally envisaged in terms of Government Resolution dated 30th August 2008, or for that matter, 10 or 20 years of service, as was recommended by the Sixth Central Pay Commission. In our opinion, the Resolution of the Central Government dated 30th August 2008 cannot be read as conferring any right on the government employees. The resolution was not notified and enforced to confer a legal right.[7] The Office Memorandum dated 19.05.2009 promulgates and operationalises the MACP Scheme with effect from 01.09.2008. The Office Memorandum states that financial upgradations as per the provisions of the earlier ACP Scheme would be granted till 30.08.2008. Further, past cases would not be re-opened and the difference in pay scales on account of grant of financial upgradation under the old ACP Scheme and the MACP Scheme shall not be construed as an anomaly.

[7] See – ***Bachhittar Singh*** v. ***State of Punjab & Another***, AIR 1963 SC 395, ***State of Assam Etc.*** v. ***Kripanath Sarma and Others Etc.***, AIR 1967 SC 459, and other cases on the aspect of when an order/resolution would confer a legal right. It is to be noted that the doctrine of legitimate expectation has not been invoked and has no application in the facts of this case.

10. Learned counsel for the government employees, inspite of be .g correct that ***M.V. Mohanan Nair*** (supra) does not refer to ***Balbir Singh Turn*** (supra) and does not overrule it specifically, misses the point that the entire ratio and reasoning given in ***M.V. Mohanan Nair*** (supra), as rightly observed in ***R.K. Sharma*** (supra), cannot be reconciled with the ratio in ***Balbir Singh Turn*** (supra). ***M.V. Mohanan Nair*** (supra) has examined the MACP Scheme in depth and detail to settle the controversy, *inter alia* holding that supersession of the ACP Scheme by the MACP Scheme is a matter of government policy, and that "after accepting the recommendation of the Sixth Central Pay Commission, the ACP Scheme was withdrawn and the same was superseded by the MACP Scheme with effect from 1.9.2008."[8] The ACP Scheme and MACP Schemes were held to be in the nature of incentive schemes to relieve stagnation and not as a part of pay structure, which had revised the pay and the dearness allowance with effect from 1.1.2006. In these circumstances, we do not think a case for reference to a larger Bench of three Judges to reconsider the ratio in the decision of ***R.K. Sharma*** (supra) is made out. Therefore, we reject the contention of the learned counsel for the respondents/government employees for reference of the matter.

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[8] See paragraph no. 32 in M.V. Mohanan Nair (supra) as reported in (2020) 5 SCC 421.

11. On the third aspect, we should record the concession rightly made by the Additional Solicitor General during the course of the hearing that the personnel working in the Central Armed Forces would be granted financial benefit under the MACP Scheme on completion of prescribed years of regular service by relaxation in cases where, on account of administrative or other reasons, they could not be sent for participation in pre-promotional course. The appellant-Union of India has agreed to accept the directions given by the Delhi High Court in the case of ***Ram Avtar Sharma*** v. ***Director General of Border Security Force***[9] in this regard. A liberal, pragmatic and ameliorative approach is required to succour genuine grievances of the personnel doing duty for the nation, owing to which they forgo participation in pre-promotional courses. Accordingly, the third question is answered against the appellant-Union of India.

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12. In view of the aforesaid discussion, the appeals filed by the Union of India are partly allowed and impugned judgments, to the extent they hold that the MACP Scheme applies with effect from 1.1.2006 and that under the MACP Scheme the employees are entitled to financial upgradation equivalent to the next promotional post, are set aside. MACP Scheme is applicable with effect from 1.9.2008

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[9] W.P. (c) No. 5278 of 2013 decided on 12th August 2014

and as per the MACP Scheme, the entitlement is to financial upgradation equivalent to the immediate next grade pay in the hierarchy of the pay bands as stated in Section 1, Part A of the First Schedule to the Central Civil Services (Revised Pay) Rules, 2008. The third issue, which relates to the fulfilment of pre-promotional norms for grant of financial upgradation, is decided against the appellant-Union of India to the extent that this would not be insisted in the case of the Central Armed Forces personnel where, for administrative or other reasons, they could not be sent or undergo the pre-promotional course.

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All pending applications are disposed of.

.....J.
(SANJIV KHANNA)

.....J.
(BELA M. TRIVEDI)

NEW DELHI;
AUGUST 22, 2022.