

UNION OF INDIA AND OTHERS

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v.

M. V. MOHANAN NAIR

(Civil Appeal No. 2016 of 2020)

MARCH 05, 2020

B

**[R. BANUMATHI, A. S. BOPANNA AND  
HRISHIKESH ROY, JJ.]**

*Service Law – Modified Assured Career Progression (MACP) Scheme vis-à-vis Assured Career Progression (ACP) Scheme – ACP Scheme was withdrawn and superseded by MACP Scheme – Respondents given beneficial pay upgradation as per MACP Scheme, however claimed the benefit of Grade Pay of the next promotional hierarchy following the erstwhile ACP Scheme – Granted by different Benches of CAT relying upon Union of India v. Raj Pal – Challenged by appellants – Dismissed by High Courts – On appeal, held: Though ACP and MACP Schemes are intended to provide relief against stagnation, both have different features – MACP Scheme was recommended by Sixth Central Pay Commission to bring systematic changes in the existing ACP Scheme so that all employees irrespective of existing hierarchical structure in their organisations/cadre get the same benefit – Words used in the MACP Scheme are “placement in the immediate next higher Grade Pay in the hierarchy of the recommended revised pay bands” – Term “Grade Pay in the next promotional post” is conspicuously absent in the entire body of the MACP Scheme – Respondents’ contention that the benefit of MACP Scheme is referable to the promotional post, is de hors the MACP Scheme – When the expert body like Pay Commission comprehensively examined all the issues, various representations and the disparities, the court should not interfere with its recommendations – MACP Scheme has not been challenged by the respondents – Further, Raj Pal’s case was dismissed by the Supreme Court on technical ground without any decision on merits and thus could not have been taken as a precedent – No grounds made out to show that the MACP Scheme granting financial upgradation in the next grade pay is arbitrary – Impugned orders set aside – Constitution of India – Art.141 – First Schedule of Central Civil Services (CCS) (Revised Pay) Rules, 2008.*

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A *Service Law – Assured Career Progression (ACP) Scheme and Modified Assured Career Progression (MACP) Scheme – Distinction between – Discussed.*

*Constitution of India – Art.141 – ‘Law’ under – Held: Law declared by the Supreme Court is a principle laid down by the court and it is this principle which has the effect of a precedent – A principle is a proposition delivered after examination of the matter on merits – Service Law.*

*Service Law – Modified Assured Career Progression (MACP) Scheme – Object and salient features of – Discussed.*

C **Disposing of the appeals, the Court**

**HELD: 1.1** In order to bring systematic changes in the existing scheme of ACP so that all employees irrespective of existing hierarchical structure in their organisations/cadre get the same benefit, MACP was recommended by the Sixth Central Pay Commission. Both ACP and MACP Schemes are in the nature of incentive schemes devised with the object of ensuring that the employees who are unable to avail of adequate promotional opportunities, get some relief from stagnation in the form of financial benefits. Under the MACP Scheme, financial upgradations are granted at three regular intervals on completion of 10-20-30 years of service without promotion. Hence, it is also intended to ensure that the employees are adequately incentivised to work efficiently despite not getting promotion for want of promotional avenue. The change in policy brought about by supersession of the ACP Scheme with the MACP Scheme is after well-deliberated and well-documented recommendations of the Sixth Central Pay Commission. Considering the various issues in the implementation of the ACP Scheme, the Pay Commission expressed its views “the only other way is to bring systematic changes in the existing Scheme of ACP so that all the employees irrespective of the existing hierarchy structure in their organisations/cadres, get some benefit under it”. The Commission therefore, recommended that the existing Scheme of ACP be continued with the modifications indicated thereon in the Report that the financial upgradation has to be in the next immediate Grade Pay. One of the reasons for the expert body recommending

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the MACP Scheme was that there were inter-departmental disparities where several departments had varying promotional hierarchies. As a result, the working of ACP Scheme under which an employee who stagnated for 12 years, was entitled to pay in the Pay Scale of the next promotional post, led to inter-departmental anomalies. The Pay Commission therefore, recommended MACP Scheme with a view to putting an end to the problem ensuing from inter-departmental disparities. [Paras 9, 26][861-F-H; 871-G-H; 872-A]

1.2 In the ACP Scheme, there was no Grade Pay but only fixed Pay Scales and fixed increments. After the Sixth Central Pay Commission, various Pay Scales have been clubbed together and there is revised Pay Scale with corresponding Pay Bands and corresponding Grade Pay. The norms for grant of ACP were stringent and the government servant has to satisfy the norms for promotion. Whereas under the MACP Scheme, for financial upgradation, the rigour of screening is diluted. [Para 18] [868-A-B]

1.3 The words used in the MACP 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 *de hors* 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. 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. [Para 27] [872-C-E]

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A       **1.4 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. 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. After accepting the recommendation of the Sixth Central Pay Commission, the ACP Scheme was withdrawn and the same was superseded by the MACP Scheme with effect from 01.09.2008. This is not some random exercise unilaterally done by the Government, rather, it is based on the opinion of the expert body – Sixth Central Pay Commission. When the expert body like Pay Commission has comprehensively examined all the issues and representations and also took note of inter-departmental disparities owing to varying promotional hierarchies, the court should not interfere with the recommendations of the expert body. When the government has accepted the recommendation of the Pay Commission and has also implemented those, any interference by the court would have a serious impact on the public exchequer. In the present batch of cases where the respondents are claiming financial upgradation in the grade pay of promotional hierarchy, no grounds are made out to show that the MACP Scheme granting financial upgradation in the next grade pay is arbitrary and unjust; warranting interference. [Paras 28, 29 and 35][872-F-H; 873-B-D; 875-G-H]**

F       **2.1 In the case of Raj Pal, the post of Photocopier, being an isolated post, the order was passed in the peculiar facts and circumstances of the case. Rajpal's case did not go into any details in respect of the overall features of the new MACP Scheme and did not consider the recommendations of the expert body which culminated in the new Scheme. Raj Pal's case having been dismissed on the ground that no sufficient cause was shown for the delay in refiling, Raj Pal's case ought not to have been quoted as precedent of this Court by the High Courts. [Paras 42, 45][879-B, C, F; 881-B]**

H       *Union of India v. Raj Pal Decision of Supreme Court dated 15.04.2013 in SLP (C) No. CC 7467 of 2013 – distinguished.*

**2.2 Article 141 of the Constitution of India provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India, i.e. the pronouncement of the law on the point shall operate as a binding precedent on all courts within India. Law declared by the Supreme Court has to be essentially understood as a principle laid down by the court and it is this principle which has the effect of a precedent. A principle as understood from the word itself is a proposition which can only be delivered after examination of the matter on merits. It can never be in a summary manner, much less be rendered in a decision delivered on technical grounds, without entering into the merits at all. A decision, unaccompanied by reasons can never be said to be a law declared by the Supreme Court though it will bind the parties inter-se in drawing the curtain on the litigation. Without considering the advantages in the MACP Scheme, the High Courts erred in interfering with the government's policy in accepting the recommendations of the Sixth Central Pay Commission by simply placing reliance upon Raj Pal's case. Since certain anomalies on implementation of the MACP Scheme have been brought to the notice of the Joint Committee in the various meetings of the Joint Committee, Union of India and DoP&T to consider the same as they deem it appropriate and take a decision in accordance with law. [Paras 44, 51 and 53][879-G-H; 880-A-B; 883-D-E; G-H]**

*Union of India and Another v. P.V. Hariharan and Another* (1997) 3 SCC 568 : [1997] 2 SCR 1050; *State of U.P. and Others v. U.P. Sales Tax Officers Grade II Association* (2003) 6 SCC 250; *Secretary, Government (NCT of Delhi) and Others v. Grade-1 Officers Association and Others* (2014) 13 SCC 296 : [2014] 8 SCR 976; *State of Tamil Nadu v. S. Arumugham* (1998) 2 SCC 198 : [1997] 5 Suppl. SCR 295; *State of Haryana and Another v. Haryana Civil Secretariat Personal Staff Association* (2002) 6 SCC 72 : [2002] 1 Suppl. SCR 118; *Union of India v. All India Service Pensioners' Association and Another* (1988) 2 SCC 580 : [1988] 2 SCR 697; *Supreme Court Employees Welfare Association v. Union of India and Others* (1989) 4 SCC 187 : [1989] 3 SCR 488 – relied on.

A	<u>Case Law Reference</u>		
	[1997] 2 SCR 1050	relied on	Para 30
	(2003) 6 SCC 250	relied on	Para 31
B	[2014] 8 SCR 976	relied on	Para 32
	[1997] 5 Suppl. SCR 295	relied on	Para 33
	[2002] 1 Suppl. SCR 118	relied on	Para 34
	[1988] 2 SCR 697	relied on	Para 44
C	[1989] 3 SCR 488	relied on	Para 45
	CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2016 of 2020.		
D	From the Judgment and Order dated 24.06.2013 of the High Court of Kerala at Ernakulam in OA (CAT) No. 2000 of 2013.		
	With		
E	Civil Appeal Nos. 2017, 2018, 2019, 2020, 2021, 2022 and 2044-2045 of 2020.		
F	A.N.S. Nadkarni, ASG, Ms. Madhvi Divan, Dr. Kailash Vasdev, Jaideep Gupta, (A.C.), Vinay Kumar Garg, Sr. Advs., Kunal Chatterji, Pravar Veer Mishra, Ms. Priyanka Das, Raj Bahadur Yadav, Akshay Amritanshu, Anish Kr. Gupta, Pranay Ranjan, S.K. Gupta, Sumit Upadhyay, Ms. Rekha Pandey, Arvind Kumar Sharma, S.S. Ray, Vijay Prakash, B.V. Balram Das, Ms. Alka Agarwal, Baldev Atrey, B. Krishna Prasad, Gurmeet Singh Makker, Sahil Monga, Mrs. Anil Katiyar, Ms. Priya Mishra, Arun Kumar Yadav, Surender Kumar Gupta, Mukesh Kumar Maroria, Shubham Saurav, Ms. Rekha Pandey, Ms. Vimla Sinha, Rajeev Sharma, Sahil Bhalaik, Tushar Giri, Pradeep Kr. Mittal, Ms. Shivetima D., Ms. Simanta Kr., Saurabh Kr., Raj Kishor Choudhary, K. Rajeev, O. P. Bhadani, C. K. Sasi, Nayantara Roy, Abdulla N., Ms. Somya Gupta, P.A. Kulkarni, Ms. Punam Kumari, Yatindra Sharma, Prashant Kumar, G. Umapathy, Ms. Vaishnavi, Rakesh K. Sharma, G. Tushar Rao, Mayank Sharma, Kumar Dushyant Singh, Ms. Pavitra, D.K. Thakur, Devendra Jha, Shivaraju H.B., Ritupam Uniyal, Abhishek Kumar,		
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for Debasis Misra, Mrs. Prabha Swami, Nikhil Swami, Ms. Divya Swami, A  
Naveen R. Nath, Rahul Jain, A. N. Arora, Ms. Sumita Hazarika,  
Ms. Ipsita Behura, Sunil Kumar Jain, M. B. Ramasubba Raju, E.P.  
Gopinathan, Ms. Megha, Balaji Srinivasan, R.S. Rajiv, Mohan Kumar,  
Manoj V. George, Ms. Shilpa Liza George, K.M. Vignesh Ram,  
Ms. Bhavika, Zulfiker Ali P.S., Chava Badri Nath Babu, Rameshwar B  
Prasad Goyal, C.M. Angadi, M.K. Bhardwaj, Akash Dahiya, Satish  
Kumar, G. Prakash, Jishnu M.L., Ms. Priyanka Prakash, Ms. Beena  
Prakash, M. K. Dua, Sudhir Naagar, Karamveer Singh, Sidharth Khatana,  
Ms. Haripriya Padhmanabhan, Ms. Pooja Dhar, Shrutanjaya Bhardwaj,  
Ms. Gayatri Verma, Vishal Sinha, Ms. Beena Goyal, Hitesh Kumar  
Sharma, Akhileshwar Jha, Ms. Meenakshi Gupta, B.P. Singh, Ms. Kusum C  
Chaudhry, Gp.Capt. Karan Singh Bhati, Ms. Kirti Khangarot, Ms. Celeste  
Agarwal, Ms. Oorjasvi Goswami, Advs. for the appearing parties.

The Judgment of the Court was delivered by

**R. BANUMATHI, J.**

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1. Leave granted.

2. The instant batch of appeals have been filed assailing the orders  
of various High Courts dismissing petitions filed by the appellants, thereby  
upholding decisions rendered by different Benches of Central E  
Administrative Tribunal granting financial upgradation of grade pay in  
the next promotional hierarchy by placing reliance upon *Union of India  
and others v. Raj Pal and another CWP No.19387 of 2011*  
dated 19.10.2011. In these batch matters, we are concerned with the  
question whether MACP Scheme entitles financial upgradation to the  
next grade pay or to the grade pay of the next promotional hierarchy. F

3. In all these appeals, almost all the High Courts have followed  
the Raj Pal and Ved Prakash's case and granted relief as prayed for by  
the respondents. Being aggrieved, the appellant-UOI has filed these  
appeals.

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4. The main questions falling for consideration in these appeals  
are:-

(i) Whether MACP scheme entitles financial upgradation of  
pay to the next grade pay or to the grade pay of the next

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A promotional post as envisaged under the ACP scheme?  
Whether MACP Scheme envisages grant of financial upgradation in Grade Pay Hierarchy and not in promotional hierarchy?

(ii) As contended by the respondents, whether MACP scheme is disadvantageous to the employees in comparison to ACP scheme as long as the financial upgradation is granted in hierarchy of grade pay under MACP scheme?

(iii) Whether respondents are entitled to stepping up of their grade pay to be at par with grade pay of their juniors who were getting the higher grade pay on account of implementation of MACP Scheme?

Appeals relating to Issue No.III were ordered to be de-tagged and listed separately.

5. At the outset, it is to be pointed out that almost all the Tribunals/ High Courts have only relied upon Raj Pal's case for grant of financial upgradation on promotional hierarchy and rejected the stand of the appellant-UI that under MACP scheme, the employees are entitled to financial upgradation of the next grade pay only. Since the matter was considered on merits and since the issue involves impact on the public ex-chequer and also interest of the staff of various establishments, we requested learned Senior counsel, Mr. Jaideep Gupta to assist the Court as *amicus curiae* which the learned Senior counsel has readily consented. Mr. Kunal Chatterji, learned counsel has agreed to assist the learned Senior counsel-*amicus*.

**Assured Career Progression (ACP) Scheme:-**

6. The Government of India with a view to "deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues", introduced the Assured Career Progression (ACP) Scheme with effect from 09.08.1999 vide its Office Memorandum dated 09.08.1999. To mitigate the hardship in cases of acute stagnation in a cadre or in an isolated post, it has been decided to grant two financial upgradations under the ACP Scheme to Group 'B', 'C' and 'D' employees on completion of 12 and 24 years of regular service. As per ACP Scheme, isolated post in Group 'A', 'B', 'C' and 'D' cadres which have no promotional avenues also qualify for similar benefits. The financial upgradations under the ACP Scheme is placement



in the higher Pay Scale and financial benefits in the higher Pay Scale without regular promotion. Under the financial upgradation, grant of financial benefits under the ACP Scheme to the government servants concerned is on personal basis. Such financial upgradation neither amounts to regular promotion nor require creation of new post. Some of the salient features of the ACP Scheme are as follows:-

- The ACP Scheme envisages merely placement in the higher pay-scale/grant of financial benefits (through financial upgradation) only to the Government servant concerned on personal basis and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose; A
- Under the ACP Scheme, two financial upgradations shall be allowed to Group 'B', 'C' and 'D' employees on completion of 12 years and 24 years of his/her regular service. B
- As per para 5.1 of Annexure-1 – conditions for grant of benefits under the ACP Scheme, it is stipulated that two financial upgradations would be available only if no regular promotion during the prescribed period (12 and 24 years) was granted to an employee. If an employee has already received one regular promotion, he/she would qualify for second ACP only on completion of 24 years of regular service. However, in case if two regular promotions have been received by an employee, no further benefit under the ACP Scheme would accrue in favour of the employee. C
- As per para 3.1 of the Office Memorandum dated 09.08.1999, the grant of financial upgradations under the ACP Scheme shall be subject to the conditions mentioned in the Annexure-I annexed thereon to the Office Memorandum dated 09.08.1999. D
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7. Para No.8 of the Annexure provides that the financial upgradations shall be purely personal to the employee and would have no relevance to his/her seniority position. In other words, there would be no additional financial upgradations for the senior employee on the ground that the junior employee has got the higher pay scale under the ACP Scheme. Para No.12 of Annexure-I provides that the ACP Scheme contemplates merely placement on personal basis in the higher pay scale/grant of financial benefits only and shall not amount to actual functional G

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- A promotion of the employees concerned. We may usefully refer to the relevant features of the ACP Scheme as stipulated in Annexure-I to the Office Memorandum dated 09.08.1999-Conditions for Grant of Benefits under the ACP Scheme, which reads as under:-

**Conditions for grant of benefits under the ACP Scheme:-**

- B 1. The ACP Scheme envisages merely placement in the higher pay-scale/grant of financial benefits (through financial upgradation) only to the Government servant concerned on personal basis and shall, therefore, neither amount to functional/regular promotion nor would require creation of
- C new posts for the purpose;
- .....
- D 4. The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfilment of prescribed conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc. this would have consequential effect on the second upgradation which would
- E also get deferred accordingly;
- .....
- F 8. The financial upgradation under the ACP Scheme shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employee on the ground that the junior employee in the grade has got higher pay-scale under the ACP Scheme;
- .....
- G 12. The proposed ACP Scheme contemplates merely placement on personal basis in the higher pay-scale/grant of financial benefits only and shall not amount to actual/functional promotion of the employees concerned. Since orders regarding reservation in promotion are applicable only in the case of regular promotion, reservation orders/roster shall not

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apply to the ACP Scheme which shall extend its benefits uniformly to all eligible SC/ST employees also. However, at the time of regular/functional (actual) promotion, the Cadre Controlling Authorities shall ensure that all reservation orders are applied strictly;

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8. ACP Scheme was replaced by Modified Assured Career Progression (MACP) Scheme which became operational with effect from 01.09.2008. The Sixth Central Pay Commission has recommended the adoption of MACP Scheme primarily to rectify the problems arising from inter-departmental disparities:-

- (i) ACP Scheme led to creation of certain disparities within the employees in different organisations/departments who were directly recruited in the same pay scale who received different financial upgradations under the ACP Scheme because of existence of different promotional hierarchical structure and different promotional pay scales in different organisations/departments;
- (ii) Another adverse consequence in the implementation of the ACP Scheme was that the benefit of a higher pay scale was not available if the next post in the hierarchy also existed in the identical pay scale.

9. In order to bring systematic changes in the existing scheme of ACP so that all employees irrespective of existing hierarchical structure in their organisations/cadre get the same benefit, MACP was recommended by the Sixth Central Pay Commission which was accepted by the Government with certain modifications vide its Office Memorandum dated 19.05.2009. Under the Sixth Central Pay Commission, revised pay structure has been implemented with effect from 01.01.2006; whereas benefits of ACP Scheme have been allowed till 31.08.2008. Vide Office Memorandum dated 19.05.2009, the Government of India introduced the MACP Scheme, in supersession of the ACP Scheme w.e.f. 01.09.2008. There shall be no change in distinction, classification or higher status on grant of financial upgradation under MACP as the upgradation is purely personal and merely placement in the next higher Grade Pay.

A **Modified Assured Career Progression (MACP) Scheme:-**

10. Under the MACP Scheme, three financial upgradations are made available in the next grade pay to an employee who has completed 10, 20 and 30 years of regular service in the same post without getting any promotion. The benefit would be available at the **next higher grade**

B **pay**. Some of the salient features of the MACP Scheme are as follows:-

- Para No.2 of the MACP Scheme provides that the “**MACP Scheme envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay**”.

C • As per para No.10 of the MACP Scheme – Office Memorandum dated 19.05.2009, **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 the MACP Scheme.

D • As per para No.11 of the said memorandum dated 19.05.2009, the differences in pay scales on account of financial upgradations under the ACP Scheme and MACP Scheme would not be construed as anomaly.

E 11. Para (19) of MACP Scheme 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. As per para (20) of the MACP Scheme, financial upgradations shall be purely personal to the employee and shall have no relevance to the seniority position. As such, there shall be no additional financial upgradation for the senior employees on the ground that the junior employees in the grade have received higher grade pay under MACP Scheme. We may usefully extract the relevant portion of Annexure-I of the Office Memorandum dated 19.05.2009, which reads as under:-

G **ANNEXURE-I**

**MODIFIED ASSURED CAREER PROGRESSION SCHEME (MACPS)**

H 1. There shall be three financial upgradation s under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years service respectively. Financial

upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade-pay. A

2. The MACPS envisages merely placement in the **immediate next higher grade pay in the hierarchy** of the recommended revised pay bands and grade pay as given in Section 1, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. Thus, the grade pay at the time of financial upgradation under the MACPS can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion. **In such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/organisation will be given only at the time of regular promotion.** B  
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17. The financial upgradation would be on non-functional basis subject to fitness, in the hierarchy of grade pay within the PB-1. Thereafter for upgradation 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 upgradation to the grade pay of Rs. 7600 and above. D  
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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.** F  
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 upgradation under the Scheme. G

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- A 25. If a regular promotion has been offered but was refused by the employee before becoming entitled to a financial upgradation, no financial upgradation shall be allowed as such an employee has not been stagnated due to lack of opportunities. If, however, financial upgradation has been allowed due to stagnation and the employees subsequently refuse the promotion, it shall not be a ground to withdraw the financial upgradation. He shall, however, not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion again and the second the next financial upgradation shall also be deferred to the extent of period of debarment due to the refusal.
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12. Clause 28 contains illustrations as to grant of financial upgradation under MACP. The illustrations in Clause 28 of the Scheme can easily be understood by referring to the First Schedule, Part-A of Section 1 of Central Civil Services (Revised Pay) Rules, 2008 which gives a comparison of the scale of pay under the 5<sup>th</sup> Pay Commission and the 6<sup>th</sup> Pay Commission as under:-
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THE FIRST SCHEDULE  
(SEE RULES 3 & 4)

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PART – A  
SECTION I

Revised Pay Bands and Grade Pays for posts carrying present scales in Group ‘A’, ‘B’, ‘C’ & ‘D’ except posts for which different revised scales are notified separately.

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Present Scale			Revised Pay Structure		
Sl.No.	Post/Grade	Present Scale	Name of Pay Band/Scale	Corresponding Pay Bands/Scales	Corresponding Grade Pay
(1)	(2)	(3)	(4)	(5)	(6)
1.	S-1	2550-55-2660-60-3200	-1S	4440-7440	1300
2.	S-2	2610-60-3150-65-3540	-1S	4440-7440	1400
3.	S-2A	2610-60-2910-65-3300-70-4000	-1S	4440-7440	1600
4.	S-3	2650-65-3300-70-4000	-1S	4440-7440	1650
5.	S-4	2750-70-3800-75-4400	PB-1	5200-20200	1800
6.	S-5	3050-75-3950-80-4590	PB-1	5200-20200	1900
7.	S-6	3200-85-4900	PB-1	5200-20200	2000
8.	S-7	<b>4000-100-6000</b>	<b>PB-1</b>	<b>5200-20200</b>	<b>2400</b>
9.	S-8	4500-125-7000	PB-1	5200-20200	2800

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1.	S-9	5000-150-8000	PB-2	9300-34800	4200	A
2.	S-10	5500-175-9000	PB-2	9300-34800	4200	
3.	S-11	6500-200-6900	PB-2	9300-34800	4200	
4.	S-12	6500-200-10500	PB-2	9300-34800	4200	
5.	S-13	7450-225-11500	PB-2	9300-34800	4600	
6.	S-14	7500-250-12000	PB-2	9300-34800	4800	
7.	S-15	8000-275-13500	PB-2	9300-34800	5400	
8.	New Scale	8000-275-13500 (Group A Entry)	PB-3	15600-39100	5400	B
9.	S-16	9000	PB-3	15600-39100	5400	
10.	S-17	9000-275-9550	PB-3	15600-39100	5400	
11.	S-18	10325-325-10975	PB-3	15600-39100	6600	
12.	S-19	10000-325-15200	PB-3	15600-39100	6600	
13.	S-20	10650-325-15850	PB-3	15600-39100	6600	
14.	S-21	12000-375-16500	PB-3	15600-39100	7600	
15.	S-22	12750-375-16500	PB-3	15600-39100	7600	
16.	S-23	12000-375-18000	PB-3	15600-39100	7600	C
17.	S-24	14300-400-18300	PB-4	37400-67000	8700	
18.	S-25	15100-400-18300	PB-4	37400-67000	8700	
19.	S-26	16400-450-20000	PB-4	37400-67000	8900	
20.	S-27	16400-450-20900	PB-4	37400-67000	8900	
21.	S-28	14300-450-22400	PB-4	37400-67000	10000	
Present Scale			Revised Pay Structure			
Sl.No.	Post/Grade	Sl.No.	Post/Grade	Sl.No.	Post/Grade	D
22.	S-29	18400-500-22400	PB-4	37400-67000	10000	
23.	S-30	22400-525-24500	PB-4	37400-67000	12000	
24.	S-31	22400-600-26000	HAG + Scale	75500 (annual increment @ 3 %) - 80000	Nil	
25.	S-32	24050-650-26000	HAG + Scale	75500 (annual increment @ 3 %) - 80000	Nil	E
26.	S-33	26000 (Fixed)	Apex Scale	80000 (Fixed)	Nil	
27.	S-34	30000 (Fixed)	Cab. Sec.	90000 (Fixed)	Nil	

#### Comparison of ACP and MACP Scheme:-

13. For grant of financial upgradation under ACP Scheme, a Screening Committee shall be constituted for the purpose of processing the cases for grant of benefits under the ACP Scheme. In terms of Clause 6.2 of the ACP Scheme, the composition of the Screening Committee shall be the same as that of Departmental Promotion Committee (DPC) prescribed under the relevant recruitment/service rules for regular promotion to the higher grade to which financial upgradation is to be granted. The requirement that the composition of the Screening Committee shall be the same as that of DPC, under ACP Scheme, the consideration for financial upgradations are stringent and the government servant has to satisfy the norms for promotion. Fulfilment of normal promotional norms like benchmark, departmental examination, seniority-cum-fitness (in case of Group 'D' employees) are the requirement for grant of financial upgradation under ACP Scheme.

A 14. Per contra, under the MACP Scheme, financial upgradation is granted in the **next higher Grade Pay** in the hierarchy of the recommended Pay Bands and Grade Pay as given in Section-1, Part-A of the First Schedule of CCS (Revised Pay) Rules, 2008. Under the MACP Scheme, the financial upgradation would be on non-functional basis subject to fitness in the hierarchy of Grade Pay. MACP Scheme

B 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 (vide para (19) of the MACP Scheme). In terms of para (20) of MACP Scheme, financial upgradation under the MACP Scheme shall be purely personal

C to the employees and shall have no relevance to the seniority position. As such there shall be no additional financial upgradation for the senior employees on the ground that the junior employee in the grade has got higher pay/higher Grade Pay under MACP Scheme (vide para (20) of the MACP Scheme).

D 15. The distinction between the ACP Scheme and MACP Scheme can be well understood by reference to the Pay Scale under the Fifth Central Pay Commission and the revised pay structure under the Sixth Central Pay Commission and the corresponding Grade Pay thereon as stated in Section-1, Part-A of the First Schedule of CCS (Revised Pay) Rules, 2008.

#### THE FIRST SCHEDULE

#### (SEE RULES 3 & 4)

#### PART – A

#### SECTION I

F Revised Pay Bands and Grade Pays for posts carrying present scales in Group ‘A’, ‘B’, ‘C’ & ‘D’ except posts for which different revised scales are notified separately.

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Present Scale			Revised Pay Structure		
Sl. No.	Post/Grade	Present Scale	Name of Pay Band/Scale	Corresponding Pay Bands/Scales	Corresponding Grade Pay
(1)	(2)	(3)	(4)	(5)	(6)
5.	S-4	2750-70-3800-75-4400	PB-1	5200-20200	1800
6.	<b>S-5</b>	<b>3050-75-3950-80-4590</b>	<b>PB-1</b>	<b>5200-20200</b>	<b>1900</b>
7.	S-6	3200-85-4900	PB-1	5200-20200	2000
8.	<b>S-7</b>	<b>4000-100-6000</b>	<b>PB-1</b>	<b>5200-20200</b>	<b>2400</b>
9.	S-8	4500-125-7000	PB-1	5200-20200	2800
10.	S-9	5000-150-8000	PB-2	9300-34800	4200
11.	<b>S-10</b>	<b>5500-175-9000</b>	<b>PB-2</b>	<b>9300-34800</b>	<b>4200</b>
12.	S-11	6500-200-6900	PB-2	9300-34800	4200
13.	S-12	6500-200-10500	PB-2	9300-34800	4200
14.	<b>S-13</b>	<b>7450-225-11500</b>	<b>PB-2</b>	<b>9300-34800</b>	<b>4600</b>
15.	S-14	7500-250-12000	PB-2	9300-34800	4800



16. Upon implementation of the Sixth Central Pay Commission, the Pay Scale of 3050-75-3950-80-4590 was kept in Pay Band-1 i.e. Rs.5200-20200 with Grade Pay of Rs.1900/-. Likewise, the Pay Scale of 3200-85-4900 was kept in Pay Band-1 i.e. 5200-20200 with Grade Pay of Rs.2000/-. Pay Scale of Upper Division Clerk 4000-100-6000 was also kept in the same Pay Band-1 i.e. 5200-20200 but with Grade Pay of Rs.2400/-. Under the ACP Scheme, the Government employee who was working as Lower Division Clerk in the Pay Scale of 3050-75-3950-80-4590, on completion of 12 years of service, would be entitled to the financial upgradation in the next promotional hierarchy i.e. in the cadre of UDC i.e. Pay Scale of 4000-100-6000 while working in the same capacity as LDC. Whereas under the MACP Scheme, the Government servant who is Lower Division Clerk in the Pay Band-1 i.e. Rs.5200-20200/- with Grade Pay of Rs.1900/-, on completion of 10 years of service upon grant of financial upgradation, would be getting the immediate next higher Grade Pay of Rs.2000/- and not the grade pay on promotional hierarchy. Following the erstwhile ACP Scheme (as per which financial upgradation was granted in promotional hierarchy), the respondents are claiming the benefit of Grade Pay of Rs.4200/- (which is in the next promotional hierarchy). While the respondents are granted financial upgradations as per the prevailing rules of MACP Scheme, they can only claim the immediate next higher Grade Pay and not the Grade Pay in the next promotional hierarchy.

17. As noted above, under the Sixth Pay Commission, scales of pay of various hierarchies namely Lower Division Clerk and Upper Division Clerk are all placed in the Pay Band-I i.e. Rs.5200-20200, of course with different Grade Pay. When the respondents are enjoying the benefit of the Sixth Pay Commission by getting higher pay scale, they should go by the Scheme in accepting what it gives on the financial upgradation; but the respondents are claiming the best of the benefits from both the ACP and MACP Schemes. The respondents have already been granted the beneficial pay upgradation as per the prevailing rules of MACP Scheme on the recommendation of the Sixth Central Pay Commission. The previous ACP Scheme was withdrawn and superseded by MACP Scheme with effect from 01.09.2008 based on the recommendation of the Sixth Central Pay Commission. Under MACP Scheme, the respondent can only claim immediate next Grade Pay and not the corresponding Grade Pay in promotional hierarchy.

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- A 18. As discussed earlier, in the ACP Scheme, there was no Grade Pay but only fixed Pay Scales and fixed increments were there. After the Sixth Central Pay Commission, various Pay Scales have been clubbed together and there is revised Pay Scale with corresponding Pay Bands and corresponding Grade Pay. As discussed earlier, the norms for grant of ACP were stringent and the government servant has to satisfy the norms for promotion. Whereas under the MACP Scheme, for financial upgradation, the rigour of screening is diluted. For upgradation under the MACP Scheme, the benchmark of “Good” would be applicable till the Grade Pay of Rs.6600/- in Pay Band-3. The benchmark will be “Very Good” for financial upgradation to the Grade Pay of Rs.7600/- and above.
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C **Contentions:-**

19. Ms. Madhvi Divan, learned ASG appearing on behalf of Union of India has taken us through the salient features of both ACP and MACP schemes and submitted that ACP and MACP schemes shall be subject to the conditions mentioned thereon. Learned ASG has submitted that Sixth Central Pay Commission took the view that ACP led to disparities within the employees in different organisations/departments and recommended adoption of the modified scheme which was accepted by the Government and Sixth Central Pay Commission and MACP scheme are being implemented. It was submitted that under the ACP scheme, the employee is entitled to financial upgradations (two times – on completion of 12 and 24 years of regular service) as per promotional hierarchy. Whereas under the MACP scheme, the financial upgradations (three times – on completion of 10, 20 and 30 years of regular service) are fixed on the basis of immediate next grade pay and therefore, ACP and MACP schemes are significantly different in terms of the effect and benefit to the employees. Learned ASG submitted that the previous ACP scheme was withdrawn and it is superseded by the MACP scheme w.e.f. 01.09.2008 and the respondents while enjoying the benefits of revised pay structure under the Sixth Central Pay Commission, cannot cherry-pick the benefit of financial upgradation in the next promotional hierarchy under the erstwhile ACP scheme. Learned ASG has further submitted that it is the prerogative of the Government to provide any financial benefit to its employees and so long as such scheme is not discriminatory or arbitrary, the Court may not interfere with schemes of Government fixing pay scales and granting incentives.
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20. Mr. Vinay Kumar Garg, learned Senior counsel appearing on behalf of some respondents has submitted that pay band includes a bracket of erstwhile pay scale and the grade pay and the concept of grade pay is a fitment benefit applicable to different pay. Learned Senior counsel submitted that when a person is to be given benefit, pay, allowance or upgradation of the pay has to be given and in such a case, the upgradation has to be in the next hierarchy of promotional position i.e. grade pay in the next promotional position. It was submitted that pay, allowance and financial upgradation granted to the employees are the “conditions of service” and the same cannot be altered at the will of the employer-Government. Learned Senior counsel further submitted that MACP scheme envisages merely placement in the immediate next higher grade pay and the word “hierarchy” cannot be dissected from the “recruitment” and “conditions of service”. It was submitted that as per Rule 3(7) of Central Civil Services (Revised Pay) Rules, 2008, “*revised pay structure*” in relation to any post specified in column (2) of the First Schedule means the *pay band* and *grade pay* specified against that post or the pay scale specified in column (5) and (6) thereof. It was submitted that while granting financial upgradation under MACP scheme, the same has to be in the “higher grade pay in the next promotional hierarchy and not merely in the hierarchy of grade pay”.

21. Mr. Jaideep Gupta, learned *amicus* assisted by Kunal Chatterji submitted that the object and purpose of the 1999 ACP was to mitigate hardship in case of acute stagnation either in a cadre or in an isolated post and MACP scheme of 2009 is also for the same purpose and grant of financial upgradation under MACP scheme is only continuation of the existing scheme with certain modifications. Learned *amicus* further submitted financial upgradation which is granted under the ACP and MACP both involve fixation/refixation of pay and allowance which become the basis of the fixation of pay and allowances for the rest of the career of the employee concerned and such financial upgradation is not merely a special allowance which can be granted or taken back at the will of the employer. Learned *amicus* has submitted that MACP scheme linked to the grade pay should not be taken into consideration and MACP scheme should be interpreted to mean that financial upgradation has to be granted to the grade pay of the next promotional post and not to the next grade pay in the Schedule I to the CCS (Revision of Pay) Rules. Learned *amicus* urged the Court to adopt a purposive interpretation of the MACP scheme to grant financial upgradation in the

- A next promotional hierarchy as in the erstwhile ACP scheme. It was contended that if financial upgradation is granted in the hierarchy of grade pay then MACP scheme would lead to a discriminatory treatment violating Article 14 of the Constitution of India. In this regard, learned *amicus* has drawn the attention of the Court to the discussion of the Joint Committee of MACP scheme held under the Chairmanship of the Joint Secretary (E) of the Department of Personnel and Training on 06.10.2010.

22. Mr. C.K. Sasi, learned counsel appearing for the respondents in SLP(C) No.21803 of 2014 and SLP(C) No.29605 of 2017 has submitted that when the Pay Commission and incentive scheme is introduced, the employee's interest has to be kept in view and the same cannot be disadvantageous to the employees when compared to the erstwhile scheme. In support of his contention, learned counsel has drawn our attention to the comparative chart which he has filed along with his written submission.

23. Reiterating the submissions of learned *amicus* and the other submissions, Ms. Prabha Swami, learned counsel appearing for the respondents in SLP(C) No.31125 of 2016 has taken us through the facts and submitted that if the ACP had been continued after the completion of twenty-four years of service, respondents (SLP(C) No.31125 of 2016) would have been in the grade pay of Rs.5400/- in Pay Band-3 whereas due to MACP, the respondents were placed in grade pay of Rs.4600/- in Pay Band-2 and this has caused discrimination and financial hardship to the respondents. Learned counsel has also drawn our attention to the comparative chart and submitted that MACP scheme has operated to the disadvantage of the respondents.

24. Mr. M.K. Bhardwaj, learned counsel representing the intervenors has drawn our attention to the Record Note of the meeting of the Joint Committee on MACP scheme held under the Chairmanship of the Joint Secretary, DOP&T on 15.09.2010 and submitted that the Committee had taken note of various anomalies and also as to how the implementation of MACP has resulted as a disadvantage to the Government servants. Mr. Bhardwaj has drawn our attention to various anomalies noted by the Committee and submitted that in Raj Pal's case, the Record Note of the third meeting of MACP scheme held on 15.03.2011 was taken note by the High Court and the High Court rightly held that Raj Pal is entitled to financial upgradation in the grade pay based on the

next promotional hierarchy. It was submitted that if the financial upgradation is to be granted on the basis of next grade pay, it would be greatly disadvantageous to the employees. A

**Discussion and findings:-**

25. Though various contentions have been raised assailing the MACP Scheme viz. “**financial upgradation in the next Grade Pay**” and “**no stepping up of pay on the ground that junior getting more pay**”, be it noted that the clauses of the MACP Scheme including the clause providing the financial upgradation in the next Grade Pay have not been challenged by the respondents. In the impugned judgments, the Tribunals/High Courts have only relied upon Raj Pal’s case and not gone into the MACP Scheme vis-à-vis erstwhile ACP Scheme and also not considered the merits of the contention of the respondents. We have therefore, considered the MACP Scheme vis-à-vis erstwhile ACP Scheme in the light of the contentions raised by the respondent. B C

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

A for 12 years, was entitled to pay in the Pay Scale of the next promotional post, led to inter-departmental anomalies. The Pay Commission therefore, recommended MACP Scheme with a view to putting an end to the problem ensuing from inter-departmental disparities.

27. The learned *amicus* and the learned counsel appearing for  
B the respondents urged the court to adopt a “purposive interpretation” that the words “immediate next higher Grade Pay” to be interpreted as “Grade Pay of the next promotional post” in the hierarchy. MACP Scheme envisages merely placement in the immediate next higher Grade Pay. By perusal of the MACP Scheme extracted earlier, it is seen that the  
C 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 *de hors* the MACP Scheme and cannot be accepted.  
D 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  
E 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.

F 28. The object behind the MACP Scheme is to provide relief against the stagnation. If the arguments of the respondents are to be accepted, they would be entitled to be paid in accordance with the grade pay offered to a promotee; but yet not assume the responsibilities of a promotee. As submitted on behalf of Union of India, if the employees are entitled to  
G enjoy Grade Pay in the next promotional hierarchy, without the commensurate responsibilities as a matter of routine, it would have an adverse impact on the efficiency of administration.

29. The change in policy brought about by supersession of ACP Scheme with the MACP Scheme is after consideration of all the  
H disparities and the representations of the employees. The Sixth Central

Pay Commission is an expert body which has comprehensively examined all the issues and the representations as also the issue of stagnation and at the same time to promote efficiency in the functioning of the departments. MACP Scheme has been introduced on the recommendation of the Sixth Central Pay Commission which has been accepted by the Government of India. After accepting the recommendation of the Sixth Central Pay Commission, the ACP Scheme was withdrawn and the same was superseded by the MACP Scheme with effect from 01.09.2008. This is not some random exercise which is unilaterally done by the Government, rather, it is based on the opinion of the expert body – Sixth Central Pay Commission which has examined all the issues, various representations and disparities. Before making the recommendation for the Pay Scale/Revised Pay Scale, the Pay Commission takes into consideration the existing pay structure, the representations of the government servants and various other factors after which the recommendations are made. When the expert body like Pay Commission has comprehensively examined all the issues and representations and also took note of inter-departmental disparities owing to varying promotional hierarchies, the court should not interfere with the recommendations of the expert body. When the government has accepted the recommendation of the Pay Commission and has also implemented those, any interference by the court would have a serious impact on the public exchequer.

30. Observing that it is the function of the Government which normally acts on the recommendations of the Pay Commission which is the proper authority to decide upon the issues, in *Union of India and another v. P.V. Hariharan and another* (1997) 3 SCC 568, it was held as under:-

“5. .... It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of “equal pay for equal work” is also being misunderstood and

A misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales. We have come across orders passed by  
B Single Members and that too quite often Administrative Members, allowing such claims. These orders have a serious impact on the public exchequer too. It would be in the fitness of things if all matters relating to pay scales, i.e., matters asking for a higher pay scale or an enhanced pay scale, as the case may be, on one or the other ground, are heard by a Bench comprising at least one Judicial  
C Member. ....”

31. Observing that the decision of expert bodies like the Pay Commission is not ordinarily subject to judicial review, in *State of U.P. and Others v. U.P. Sales Tax Officers Grade II Association* (2003) 6 SCC 250, the Supreme Court held as under:-

D “11. There can be no denial of the legal position that decision of expert bodies like the Pay Commission is not ordinarily subject to judicial review obviously because pay fixation is an exercise requiring going into various aspects of the posts held in various services and nature of the duties of the employees.....”.

E 32. In *Secretary, Government (NCT of Delhi) and others v. Grade-I Officers Association and others* (2014) 13 SCC 296, the Supreme Court refused to interfere with the ACP Scheme as it would violate government policy and since exercise of judicial review would not be proper, upheld the ACP Scheme and the conditions therein.

F 33. In *State of Tamil Nadu v. S. Arumugham* (1998) 2 SCC 198, the Supreme Court has observed that the government has the right to frame a policy to ensure efficiency and proper administration and to provide to suitable avenues for promotion to officers working in different department. The Supreme Court has further observed that the Tribunal  
G cannot substitute its own views for the views of the government or direct new policy based on the views of Tribunal.

34. Observing that fixation of pay and determination of responsibilities is a complex matter which is for the executive to take a decision, the courts should approach such matters with restraint, in *State of Haryana and Another v. Haryana Civil Secretariat Personal Staff Association* (2002) 6 SCC 72, the Supreme Court held as under:-  
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“10. It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter, several relevant factors, some of which have been noted by this Court in the decided case, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay..... That is not to say that the matter is not justiciable or that the courts cannot entertain any proceeding against such administrative decision taken by the Government. The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter. Even in a case where the court holds the order passed by the Government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The court should avoid giving a declaration granting a particular scale of pay and compelling the Government to implement the same.....”. [Underlining added]

35. The prescription of Pay Scales and incentives are matters where decision is taken by the Government based upon the recommendation of the expert bodies like Pay Commission and several relevant factors including financial implication and court cannot substitute its views. As held in *Haryana Civil Secretariat Personal Staff Association (2002) 6 SCC 72*, the court should approach such matters with restraint and interfere only when the court is satisfied that the decision of the Government is arbitrary. Even in a case where the court takes the view that order/Scheme passed by the Government is not an equitable one, ordinarily only a direction could be given to the State Government or the authority for consideration of the matter and take a decision. In the present batch of cases where the respondents are claiming financial upgradation in the grade pay of promotional hierarchy, no grounds are made out to show that the MACP Scheme granting financial upgradation in the next grade pay is arbitrary and unjust; warranting interference.

- A The implementation of the MACP Scheme is claimed to have led to certain anomalies; but as pointed out earlier, MACP Scheme itself is not under challenge.

36. **Raj Pal's Case – Whether could have been taken as a precedent:-** In almost all the cases, the High Courts have relied upon Raj Pal's case only on the basis that Raj Pal's case was dismissed by the Supreme Court. Even at the outset, it is to be pointed out that Raj Pal's case, SLP (C) No. ....CC 7467 of 2013 was dismissed by the Supreme Court vide order dated 15.04.2013 on the ground that there was no sufficient explanation to condone the delay in refiling the Special Leave Petition which is a default in the manner in which the case was prosecuted and not a dismissal on merits. Be that as it may, since various High Courts have relied upon Raj Pal's case, it is necessary to refer to the facts, findings thereon and whether it could have been followed as precedent.

- D 37. Raj Pal was working in the post of Photocopier w.e.f. 12.10.1986 in the pay scale of Rs.3050-4590/- in the Central Administrative Tribunal, Chandigarh Bench, Chandigarh. The post of Photocopier is an isolated post. Upon introduction of the ACP Scheme in the year 1999, on completion of twelve years of regular service, Raj Pal was granted the next higher scale in the hierarchy of pay scales i.e. Rs.3200-4590/- vide order dated 12.10.1999. At that point of time, Raj Pal claimed parity with other posts like Hindi Typist/LDC which was also in the equivalent pay scale of Rs.3050-4590/- and had been placed in the scale of Rs.4000-6000/- on the grant of 1<sup>st</sup> financial step up on completion of twelve years of regular service. He also claimed that on completion of twenty-four years of regular service in second financial step up, he should be placed in the scale of Rs.5500-9000/-. In the earlier round of litigation, Raj Pal filed O.A. No.278/CH/2004 claiming the aforesaid parity with posts like Hindi Typist/LDC and the same was allowed by Central Administrative Tribunal by its order dated 30.08.2004 whereby Raj Pal was held entitled to the benefit of higher pay scale under the ACP Scheme of 1999 as applicable for the similar posts i.e. Hindi Typist/LDC. The order dated 30.08.2004 was challenged by Union of India before the High Court in CWP No.7356/CAT of 2005 and the same was dismissed vide order dated 23.05.2007.

- H 38. For proper appreciation of Raj Pal's case, we may refer to the relevant scales of pay with revised Pay Bands, which are as under:-

Present Scale			Revised Pay Structure		
Sl.No.	Post/Grade	Present Scale	Name of Pay Band/Scale	Corresponding Pay Bands/Scales	Corresponding Grade Pay
(1)	(2)	(3)	(4)	(5)	(6)
6.	S-5	3050-75-3950-80-4590	PB-1	5200-20200	1900
7.	S-6	3200-85-4900	PB-1	5200-20200	2000
8.	S-7	4000-100-6000	PB-1	5200-20200	2400
9.	S-8	4500-125-7000	PB-1	5200-20200	2800
10.	S-9	5000-150-8000	PB-2	9300-34800	4200
11.	S-10	5500-175-9000	PB-2	9300-34800	4200

Upon implementation of the Sixth Central Pay Commission, the scale of Rs.3050-4590/- was kept in PB-1-Rs.5200-20200/- with grade pay of Rs.1900/-. The scale of Rs.4000-6000/- was also kept in PB-1 with grade pay of Rs.2400/-. The scale of Rs.5500-9000/- was kept in PB-2-Rs.9300-34800/- with grade pay of Rs.4200/-. In terms of MACP Scheme, by the order dated 09.08.2010, Raj Pal was granted second financial upgradation in the PB-1 of Rs.5200-20200/- with grade pay of Rs.2400/-.

39. Raj Pal filed OA No. 1038/CH/2010 before CAT contending that his pay has been wrongly fixed in PB-1 in the scale of Rs.5200-20200/- with Grade Pay of Rs. 2400/-. He claimed that he was entitled to be fixed in PB-2 in the scale of Rs.9300-34800/- with Grade Pay of Rs. 4600/-. Raj Pal relied on para (6) of the MACP Scheme as per which in case of employees granted financial upgradations under ACP Scheme till 01.01.2006, their revised pay will be fixed with reference to the pay scale granted to them under ACP. The Tribunal vide its order dated 31.05.2011 noted that it is not disputed that the post held by Raj Pal has been declared equivalent to the post of LDC/Hindi Typist etc. by the Tribunal as well as the High Court in matters of grant of ACP and these pronouncements have attained finality and also stood implemented. The OA was allowed and the appellants were directed to grant second financial upgradation in the promotional hierarchy in PB-2 in the scale of Rs.9300-34,800/- with Grade Pay of Rs.4,200/- to Raj Pal under the MACP from due date and fix his pay in the hierarchy of posts decided in his case earlier. The appellants filed CWP No.19387 of 2011 before the High Court assailing the aforesaid order. It was *inter alia* contended by the appellants that the earlier ACP Scheme stood superseded by the MACP scheme and both the schemes cannot run concurrently. The said writ petition was dismissed by the High Court.

A 40. The above judgment of the High Court was challenged in the Supreme Court by filing SLP (C) No. ....CC 7467 of 2013. The SLP was filed on 24.12.2011; but some defects were observed by the Court Registry and returned for rectification whereafter the SLP was refiled only on 21.03.2013. The SLP was dismissed by the Hon'ble Chamber Judge vide order dated 15.04.2013 on the ground that sufficient explanation has not been given to condone the delay in refiling the SLP.

B 41. Insofar as Raj Pal's case is concerned, in view of the dismissal of the earlier writ petition i.e. CWP No.7356/CAT of 2005, Principal Bench of the Tribunal issued letter dated 02.08.2007 directing all the Benches of the Tribunal that the Photocopiers working in the respective Benches may be granted 1<sup>st</sup> financial upgradation under ACP Scheme in the scale of pay of Rs.4000-6000/- and 2<sup>nd</sup> financial upgradation in the scale of Rs.5500-9000/-. In Raj Pal's case, taking note of the earlier round of litigation i.e. O.A.No.278/CH/2004 and CWP No.7356/CAT of 2005 and the letter sent by the Principal Bench of the Tribunal dated 02.08.2007 in its order dated 31.05.2011 in O.A. No. 1038/CH/2010, the Tribunal held that Raj Pal having been placed under ACP scheme – second financial upgradation in the scale of Rs.5500-9000/- is entitled to PB-2 (Rs.9300-34800/- with grade pay of Rs.4200/-). The relevant findings of the Tribunal in O.A. No.1038/CH/2010 read as under:-

E “4. The respondents took the matter to Punjab and Haryana High Court by way of filing a CWP No.7356 CAT of 2005. The CWP was dismissed vide order dated 23.05.2007, holding the applicant entitled to the benefit of ACP at par with the LDC/Hindi Typist, etc. It was thereafter that the Principal Bench of the Tribunal issued letter dated 02.08.2007, directing all the Benches of the Tribunal that the Photocopiers working in respective Benches may be granted 1<sup>st</sup> financial upgradation under ACP Scheme in the scale of pay of Rs.4000-6000 and 2<sup>nd</sup> financial upgradation in the scale of Rs.5500-9000.

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12. There is no dispute that the applicant is holding the post of photocopier, which is an isolated post, having no avenues for promotion. It is also not disputed that, the post held by the applicant had been declared equivalent to the post of LDC/Hindi Typist, etc. by the Tribunal as well as the High Court by judicial

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pronouncement in matters of grant of ACP, which have attained finality and stands implemented also. Accordingly, applicant was granted 1<sup>st</sup> ACP (under the old ACP) w.e.f. 09.08.1999 in the pay scale of Rs.4000-6000.” [Underlining added] A

42. It was on the above, the Tribunal held that the post of Photocopier being an isolated post and in view of the letter dated 02.08.2007 sent by the Principal Bench and taking note of the earlier round of litigation, the Tribunal directed that Raj Pal be granted PB-2-Rs.9300-34800/- with grade pay of Rs.4200/-. In the case of Raj Pal, the post of Photocopier, being an isolated post, the order was passed in the peculiar facts and circumstances of the case. Rajpal’s case did not go into any details in respect of the overall features of the new MACP Scheme and did not consider the recommendations of the expert body which culminated in the new Scheme. The order passed in Raj Pal’s case could not have been taken as a precedent in other cases. This is all the more so when SLP (C) No....CC 7467 of 2013 was dismissed by the Supreme Court on the ground of delay in refiling the Special Leave Petition and no decision was rendered on merits. B C D

**Dismissal of case by the Supreme Court on the ground of delay in filing/non-filing, is not a binding precedent:-**

43. As noted above, SLP preferred by Union of India against the order dated 19.10.2011 passed by the High Court was dismissed on the ground that the delay in refiling has not been satisfactorily explained. The question which arises for consideration is when the SLP has been dismissed on the ground of delay in filing or of refiling (like in the case of Raj Pal), whether it can be taken as a binding precedent on the merits of the case as the “*law declared by the Supreme Court within the meaning of Article 141 of the Constitution of India*”. Raj Pal’s case having been dismissed on the ground that no sufficient cause was shown for the delay in refiling, in our considered view, Raj Pal’s case ought not to have been quoted as a precedent of this Court by the High Courts. E F

44. Article 141 of the Constitution of India provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India, i.e. the pronouncement of the law on the point shall operate as a binding precedent on all courts within India. Law declared by the Supreme Court has to be essentially understood as a principle laid down by the court and it is this principle which has the effect of a G H

- A precedent. A principle as understood from the word itself is a proposition which can only be delivered after examination of the matter on merits. It can never be in a summary manner, much less be rendered in a decision delivered on technical grounds, without entering into the merits at all. A decision, unaccompanied by reasons can never be said to be a law declared by the Supreme Court though it will bind the parties inter-se in drawing the curtain on the litigation. In *Union of India v. All India Service Pensioners' Association and another* (1988) 2 SCC 580, the Supreme Court held that “when reasons were made by the Supreme Court for dismissing the SLP, the decision becomes one which attracts Article 141 of the Constitution which provides that the law declared by the Supreme Court shall be binding on all the courts within the territory of India.....”.

45. Observing that when a Special Leave Petition is dismissed by a non-speaking order, by such dismissal, the Supreme Court does not lay down any law as envisaged under Article 141 of the Constitution of India in *Supreme Court Employees Welfare Association v. Union of India and Others* (1989) 4 SCC 187, this Court held as under:-

- “22. ....It is now a well-settled principle of law that when a special leave petition is summarily dismissed under Article 136 of the Constitution, by such dismissal this Court does not lay down any law, as envisaged by Article 141 of the Constitution, as contended by the learned Attorney General. In *Indian Oil Corporation Ltd. v. State of Bihar* (1986) 4 SCC 146 it has been held by this Court that the dismissal of a special leave petition in limine by a non-speaking order does not justify any inference that, by necessary implication, the contentions raised in the special leave petition on the merits of the case have been rejected by the Supreme Court. It has been further held that the effect of a non-speaking order of dismissal of a special leave petition without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that the Supreme Court had decided only that it was not a fit case where special leave petition should be granted. In *Union of India v. All India Services Pensioners' Association* (1988) 2 SCC 580 this Court has given reasons for dismissing the special leave petition. When such reasons are given, the decision becomes one which attracts Article 141 of the Constitution which provides that the law declared by the Supreme

Court shall be binding on all the courts within the territory of India. A  
It, therefore, follows that when no reason is given, but a special  
leave petition is dismissed simpliciter, it cannot be said that there  
has been a declaration of law by this Court under Article 141 of  
the Constitution.” [underlining added]

Raj Pal’s case having been dismissed on the ground that no B  
sufficient cause was shown for the delay in refiling, Raj Pal’s case ought  
not to have been quoted as precedent of this Court by the High Courts.

46. The learned counsel for the intervenors has referred to the  
record note of the meetings of the Joint Committee of MACP held under  
the chairmanship of JS(Establishment), DoP&T on 15.09.2010 and other C  
dates and drawn our attention to various items viz. Item No.1-Provide  
for Grade Pay of the Next Promotional Post under MACP; Item No.3-  
Option for Earlier ACP Scheme; Item No.8-Anomaly on Introduction of  
MACP Scheme; and Item No.29 - Modification in MACP Scheme. In  
response to the above submission, Union of India has filed additional D  
written submission referring to the decision in various meetings of the  
Joint Committee on MACP held on various dates.

47. **2<sup>nd</sup> Meeting of the Joint Committee dated 15.09.2010:-**  
In the 2<sup>nd</sup> Meeting of the Joint Committee held on 15.09.2010, it was  
decided that organisations/cadres would be given the option to choose E  
either the ACP Scheme or the MACP Scheme. It was also decided that  
individual options would not be permitted. Since the ACP and MACP  
Scheme were fallback options for stagnating employees, it was therefore  
decided that process of completing cadre restructuring in a time bound  
manner would solve the problem of stagnation. It was further decided  
that cadre structure had to be reviewed periodically to harmonise the F  
functional needs of the organisation and career progression of employees.  
(Vide copy of O.M. dated 10.02.2011).

48. **3<sup>rd</sup> Meeting of the Joint Committee dated 15.03.2011:-**  
In the 3<sup>rd</sup> Meeting of the Joint Committee held on 15.03.2011, the staff  
side reiterated their demand that the MACP Scheme should be granted G  
in the promotional hierarchy of posts rather than in the grade pay  
hierarchy. The official side had suggested that the Government was  
willing to consider a revision in the MACP Scheme to the effect that  
organisations/cadres shall have the option to choose either the ACP  
Scheme or the MACP Scheme. But the staff side stated that such a H

- A dispensation would not be practical and there was a need to explore other alternatives to solve the issue. Therefore, it was agreed between the staff side and the official side that there was no need to change the basic structure of MACP Scheme, but there was a need to separately examine those cases where MACP Scheme was less advantageous than the ACP Scheme (Vide the Minutes of the 3<sup>rd</sup> Meeting of Joint Committee dated 15.03.2011). Pursuant to the decision of the 3<sup>rd</sup> Meeting of Joint Committee, it was decided that the official side would write to the Ministry of Railways, Defence, Urban Development, Home Affairs and the Department of Posts to forward information in respect of the specific categories of employees where the MACP was less advantageous than the erstwhile ACP Scheme. Accordingly, these Ministries/Departments were requested to send specific cases wherein, it was less advantageous for employees under MACP Scheme as compared to ACP Scheme. It is stated that no Ministry/Department other than Ministry of Urban Development had responded. (Vide Copy of Minutes dated 15.03.2011)
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**49. Meeting of the Joint Committee dated 27.07.2012:-** In the meeting of the Joint Committee held on 27.07.2012, the official side stated that it was not possible to give individual options to the employees to opt for erstwhile ACP Scheme in preference to MACP Scheme for availing the benefit of financial upgradation.

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**50. Letter dated 04.11.2013:-** Pursuant to the Joint Committee meeting held on 27.07.2012, a letter dated 04.11.2013 was sent to the staff side making it clear that the solution lies in review of cadre structure in a time bound manner with a view to mitigate the problem of stagnation as the benefit of Modified Assurance Career Progression Scheme have been granted as a fallback option in the event of promotions not taking place in time. With regard to letter dated 04.11.2013 which relates only to Postal Department, it is clarified that in the Department of Posts, the erstwhile ACP Scheme was not operational for postal employees. These employees were covered under Time Bound One Promotion (TBOP)/ Biennial Cadre Review (BCR) Schemes. The MACP Scheme for Central Government employees is a continuation of ACP Scheme. Insofar as Department of Posts is concerned, it was decided by the Department of Posts to adopt MACP Scheme in respect of postal employees also w.e.f. 01.09.2008. Accordingly, O.M. No.4-7/(MACPS)/2009-PCC dated

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18.09.2009 was issued by Department of Posts to clarify that TBOP/BCR Schemes stand discontinued w.e.f. 01.09.2008 consequent upon introduction of MACPS to postal employees w.e.f. 01.09.2008. The O.M. dated 1-20/2008-PCC dated 04.11.2013 was issued to regulate the fixation of pay in respect of postal employees during the period 01.01.2006 to 31.08.2008 i.e. before the switch over to MACPS took place. It is stated that the O.M. dated 04.11.2013 was only in respect of postal employees governed under TBOP/BCR and does not relate to Central Government employees who were covered under erstwhile ACP Scheme. Therefore, this O.M. has no bearing on the issue in the said SLP pending before Hon'ble Supreme Court of India.

51. The ACP Scheme which is now superseded by MACP Scheme is a matter of government policy. Interference with the recommendations of the expert body like Pay Commission and its recommendations for the MACP, would have serious impact on the public exchequer. The recommendations of the Pay Commission for MACP Scheme has been accepted by the Government and implemented. There is nothing to show that the Scheme is arbitrary or unjust warranting interference. Without considering the advantages in the MACP Scheme, the High Courts erred in interfering with the government's policy in accepting the recommendations of the Sixth Central Pay Commission by simply placing reliance upon Raj Pal's case. The impugned orders cannot be sustained and are liable to be set aside.

52. In the result, all the impugned orders in these batch of appeals arising out of SLP(C) No.21803 of 2014, SLP(C) No.22181 of 2014, SLP(C) No.23335 of 2014, SLP(C) No.23333 of 2014, SLP(C) No.18227 of 2015, SLP(C) No.31125 of 2016 and SLP(C) Diary No.6042 of 2017 are set aside and the appeals preferred by the Union of India are allowed. Consequently, appeal arising out of SLP(C)No.33706 of 2016 is disposed of. No costs.

53. However, as pointed out earlier in para Nos. (47), (48) and (49), since certain anomalies on implementation of the MACP Scheme have been brought to the notice of the Joint Committee in the various meetings of the Joint Committee, Union of India and DoP&T to consider the same as they deem it appropriate and take a decision in accordance with law.

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A            54. We record our appreciation for the valuable assistance rendered by Mr. Jaideep Gupta, learned amicus assisted by learned counsel Mr. Kunal Chatterjee.

Divya Pandey

Appeals disposed of.