**CENTRAL ADMINISTRATIVE TRIBUNAL**
**AHMEDABAD BENCH**
**Original Application Nos.202/2021**

**Dated this the 28th day of September, 2021.**

**CORAM:**
**Hon'ble Shri Jayesh V. Bhairavia, Member (J)**
**Hon'ble Dr. A.K. Dubey, Member (A)**

1. Atar Singh, S/o Shri Natthi Singh, Male, Aged 60 Years,
Retired Superintendent, CGST (Group B),
CGST, Audit Vadodara Commissionerate,
Residing at B-77, Shivanjali Society,
Behind Yash Complex, Near GERI, Gotri Road, Vadodara 390021

2. Sithu Lakshmanan Gopinath,
S/o Shri Sithu Seetharamaiyer Lakshmanan, Male, Aged 51 Years,
Superintendent, CGST (Group B),
presently posted at CGST, Audit Vadodara Commissionerate,
Residing at 1, Anandvan Society,
Opp. Gokul Township, B/h Yash Complex,
Gotri Road, Vadodara-390021

3. Patel Paresh,
S/o Shri Jaswantbhai Patel, Male, Aged 54 Years,
Superintendent, CGST (Group B),
presently posted at CGST, Audit Vadodara Commissionerate,
Residing at B-16, Narmadanagar,
Opp. Rajnigandha Apts., Diwalipura Road, Vadodara-390007

4. Dave Janardan,
S/o Shri Maheshchandra Jayshanker Dave, Male, Aged 50 Years,
Superintendent, CGST (Group B),
presently posted at CGST, Audit Vadodara Commissionerate,
Residing at 16, Suvarnapath Society,
Nr. Citizen Char Rasta, Atma-Jyoti Ashram Road,
Subhanpura, Vadodara – 390023

5. Vrajesh Kumar Vakharia,
S/o Shri Prabhudasbhai Vakharia, Male, Aged 61 Years,
Retired Superintendent, CGST (Group B),
CGST, Audit Vadodara Commissionerate,
Residing at 302, Anand Niwas Apartment,
Green Park Society, Nizampura Road,
Vadodara 390002

6. Rajinder Chaudhry,
S/o Shri Roop Chaudhry, Male, Aged 58 Years,

Assistant Commissioner, CGST (Group A),
presently posted at CGST, Audit Vadodara Commissionerate,
Residing at A 202, Signature Society,
Natubhai Circle, Race Course Road, Vadodara 390007

7. Yashwant Kumar Malwiya,
S/o Shri Mohan Lal Malwiya, Male, Aged 55 Years,
Assistant Commissioner, CGST (Group A),
presently posted at CGST, Audit Vadodara Commissionerate,
Residing at 7-A, Arnav Complex,
Bldg. No. II City Light Road, Surat 395007

8. Shital Jadeja,
W/o Shri Krishnasinh Jadeja, Female, Aged 50 Years,
Superintendent, CGST (Group B),
presently posted at CGST, Audit Vadodara Commissionerate,
Residing at H-501, Sepal Residency,
Off Gotri Sevasi Road,
Opp. Gayatri Party plot, Vadodara – 390021

9. Amitabh Jala,
S/o Shri Goverdhan Lal, Male, Aged 51 Years,
Superintendent, CGST (Group B),
presently posted at CGST, Audit Vadodara Commissionerate,
Residing at 74, Shivanjali Society,
Opp. Bansal Mall, GERI Road, Gotri, Vadodara-390021

10 Rajeev Kumar Singh,
S/o Shri Ramnaresh Singh, Male, Aged 55 Years,
Superintendent, CGST (Group B),
presently posted at CGST, Audit Vadodara Commissionerate,
Residing at B-402, Silver Arcade,
Akota, Mujmahuda Road, Vadodra-390020

11. Deepti Mukesh,
D/o Late Shri Narikundil Golden Jubily, Female, Aged 48 Years,
Superintendent, CGST (Group B),
presently posted at CGST, Audit Vadodara Commissionerate,
Residing at 18, Earth Bunglows,
Akshar Chowk, Old Padra Roda, Vadodara-390020

12. Hirenkumar Kothari,
S/o Shri Hasmukhlal Kothari, Male, Aged 55 Years,
Superintendent, CGST (Group B),
presently posted at CGST, Audit Vadodara Commissionerate,
Residing at 202, Flora Tower,
Sepal Residency, B/h Gangotri Party Plot,
Sama Savli Road, Vadodara-390 024

13. Prema Ram Meena,
S/o Shri Badri Lal Meena, Male, Aged 52 Years,
Superintendent, CGST (Group B),
presently posted at CGST, Audit Vadodara Commissionerate,
Residing at A/102, Kishan Anexee,
B/h Bansal Mall, Gotri, Vadodara – 390021

14. Arun Kumar Gupta,
S/o Shri Phool Chand Gupta, Male, Aged 53 Years,
Superintendent, CGST (Group B),
presently posted at CGST, Audit Vadodara Commissionerate,
Residing at B-23/24, Ravi Park Soc.,
Nr Kalyan PArty Plot, Vasna Road, Vadodara-390007

15. Sujit Gaekwad,
S/o Shri Pushpshil Gaekwad, Male, Aged 55 Years,
Superintendent, CGST (Group B),
presently posted at CGST, Audit Vadodara Commissionerate,
Residing at A/15, Sharnam Bunglows,
Opp.Yash Complex, Gotri Road, Vadodara-21

16. Parmar Kantilal Ramdas,
S/o Shri Ramdas Parmar, Male, Aged 55 Years,
Assistant Commissioner, CGST (Group A),
presently posted at CGST, Audit Vadodara Commissionerate,
Residing at A-51, Matrix Homes,Kalali Road,
Vadodara – 12 … Applicants

By Advocate Ms. Harshal N. Pandya

V/s

1. Union of India
Notice to be served through:
The Secretary, Ministry of Finance, Department of Revenue,
North Block, New Delhi – 110001

2. The Central Board of Indirect Taxes &
Customs Notice to be Served through:
The Chairman, North Block, New Delhi - 110 001

3. The Chief Commissioner of CGST & Central Excise, Vadodara
Zone, GST Bhavan,
Race Course Circle, Vadodara 390007

4. The Commissioner of CGST &
Central Excise, Audit Commissionerate Vadodara,
CGST & Excise Building, Subhanpura,
Vadodara 390023. … Respondents

By Advocate Mr. H.D. Shukla.

**ORDER(ORAL)**

**PER: Hon'ble Shri Jayesh V Bhairavia, Member (J)**

**1** At the outset, it is required to mention that the counsel for the applicant Ms Harshal N Pandya submits that the issue involved in the present OA and in OA No.193/2021 including other identical OAs filed by similarly placed officers are common in nature and the prayer sought by the applicant herein for grant of benefit of 2$^{nd}$ MACP in PB-3 with GP of Rs.6600/- on completion of 20 years of regular service are also common in all the matters. On behalf of respondents, Standing Counsel Shri Hardik Shukla appears and agreed to above submission. Therefore, by consent of counsel for both the parties the present OA alongwith other group of matters (in total 54 OAs in three groups) i.e., (i) **OA Nos.193 of 2021 to OA No. 218/2021**, **(ii) OA No.262 of 2021 to 273 of 2021 and (iii) OA No.299/2021 to 314/2021** have been taken up together for final hearing. Learned counsel for the applicant also submits that OA No.193/2021 be treated as lead case and further submits that on behalf of all the applicants she has filed common written submissions for all the OAs including the present OA. The counsel for the respondents Mr Shukla also submitts that detailed reply filed in OA No.193/2021 be taken as the main reply for all the other connected OAs including the case on hand.

**2** At this stage it is imperative to note that the list of following OAs filed by various applicants against the denial of 2$^{nd}$ MACP in GP 6600 in PB 3 by the respondents vide impugned orders mentioned against each OA in the table given below

| Serial No. | OA No. | Total No. of Applicants | Date of rejection of the representation (Impugned Order) |
|---|---|---|---|
| 1 | 193/2021 | 41 | 05.11.2018/08.11.2018 |
| 2 | 194/2021 | 07 | 05.11.2018 |
| 3 | 195/2021 | 31 | 10.12.2020/21.12.2020 |
| 4 | 196/2021 | 05 | 29.10.2020 |
| 5 | 197/2021 | 17 | 27.10.2020 |

| | | | |
|---|---|---|---|
| 6 | 198/2021 | 12 | 09.10.2020/14.12.2020/<br>01.01.2021 |
| 7 | 199/2021 | 21 | 13.10.2020/14.12.2020/<br>11.03.2021 |
| 8 | 200/2021 | 23 | 05.11.2020 |
| 9 | 201/2021 | 20 | 21.10.2020<br>14.12.2020 |
| 10 | 202/2021 | 16 | 05.12.2019<br>09.11.2020 |
| 11 | 203/2021 | 04 | 06.11.2020 |
| 12 | 204/2021 | 01 | 01.01.2021 |
| 13 | 205/2021 | 01 | 14.12.2020 |
| 14 | 206/2021 | 01 | 04.11.2020 |
| 15 | 207/2021 | 01 | 01.01.2021 |
| 16 | 208/2021 | 01 | 09.11.2020 |
| 17 | 209/2021 | 01 | 21.12.2020 |
| 18 | 210/2021 | 01 | 10.12.2020 |
| 19 | 211/2021 | 01 | 14.12.2020 |
| 20 | 212/2021 | 01 | 05.11.2020 |
| 21 | 213/2021 | 01 | 14.08.2020 |
| 22 | 214/2021 | 01 | 28.12.2020 |
| 23 | 215/2021 | 01 | 01.01.2021 |
| 24 | 216/2021 | 01 | 17.11.2020 |
| 25 | 217/2021 | 01 | 13.11.2020 |
| 26 | 218/2021 | 01 | 14.12.2020 |
| 27 | 262/2021 | 01 | 06.05.2021 |
| 28 | 263/2021 | 03 | 11.11.2020/14.12.2020/<br>14.08.2020 |
| 29 | 264/2021 | 42 | 24.12.2020/15.12.2020/<br>17.11.2020/09.04.2021 |
| 30 | 265/2021 | 03 | 22.04.2021 |
| 31 | 266/2021 | 06 | 04.11.2020<br>22.10.2020 |
| 32 | 267/2021 | 03 | 22.04.2021 |
| 33 | 268/2021 | 01 | 14.12.2020 |
| 34 | 269/2021 | 01 | 01.06.2021 |
| 35 | 270/2021 | 01 | 19.11.2020 |
| 36 | 271/2021 | 01 | 19.04.2021 |
| 37 | 272/2021 | 01 | 08.01.2021 |
| 38 | 273/2021 | 01 | 14.12.2020 |
| 39 | 299/2021 | 03 | 28.06.2021 |
| 40 | 300/2021 | 26 | 15.12.2020/04.11.2020 |
| 41 | 301/2021 | 31 | 13.11.2020 |
| 42 | 302/2021 | 34 | 14.12.2020/24.02.2021/<br>11.02.2021/14.08.2020/<br>28.10.2020 |
| 43 | 303/2021 | 02 | 05.04.2021<br>13.11.2020 |
| 44 | 304/2021 | 05 | 21.06.2021 |
| 45 | 305/2021 | 39 | 17.11.2020/01.01.2021/<br>13.11.2020/15.12.2020 |
| 46 | 306/2021 | 02 | 04.05.2021 |
| 47 | 307/2021 | 02 | 09.04.2021 |
| 48 | 308/2021 | 17 | 28.10.2020/14.12.2020 |
| 49 | 309/2021 | 03 | 06.11.2020/05.11.2020 |
| 50 | 310/2021 | 01 | 14.12.2020 |
| 51 | 311/2021 | 01 | 24.12.2020 |
| 52 | 312/2021 | 01 | 02.06.2021 |
| 53 | 313/2021 | 01 | 02.06.2021 |
| 54 | 314/2021 | 01 | 21.06.2021 |

**3** **Considering the request and submissions made on behalf of both the parties, this Tribunal has taken OA No.193/2021 as lead case for the purpose of adjudicating the dispute raised in these groups of OAs which includes the present OA.**

**4** On going through the prayer sought in the lead case i.e. OA No.193/2021 and the submission of learned counsel for parties, the moot question that arises for consideration before us is:

***(i) Whether the respondents have rightly followed the provision of para 8.1 of Modified Assured Career Progression (MACP) Scheme in treating the Non Functional Grade Pay of Rs. 5400/- in PB-2 granted to the applicants as a separate Grade Pay and set off against MACP benefit and***

***(ii) whether respondents have correctly denied the claim of applicants for grant of GP Rs. 6600/- as 2nd MACP vide impugned decision?***

**5** It is noticed that in lead case i.e. **OA No.193/2021** - total 41 applicants jointly filed the OA under Section 19 of the A.T. Act, challenging the decision dated 05.11.2020/08.11.2020 (Annexure-A/1 Colly.), whereby the respondent No.4 **rejected their claim for grant of benefit of 2$^{nd}$ MACP in PB-3 with GP of Rs.6600/- on completion of 20 years of regular service.** The applicants have sought the following reliefs:-

*"(A) Be pleased to allow the present application.*
*(B) Be pleased to quash and set aside the decision as communicated vide letters dated 05.11.2020 and 08.01.2021 of the respondents attached as Annexure A-1 of this application.*
*(C) Be pleased to declare that the Non-Financial Up gradation to the Grade Pay of Rs.5400/- granted to the present applicants cannot be offset against one Financial Up-gradation under the MACP Scheme.*
*(D) Be pleased to declare that the applicants herein are entitled for Grade Pay of Rs.6600-as 2$^{nd}$ MACP and accordingly, direct the respondent authorities to grant 2$^{nd}$ financial up-gradation to Grade Pay Rs.6600/- to the applicants under the MACP Scheme on completion of 20 years of service or on completion of 10 years of service from the date of promotion as Superintendent with all consequential benefits."*
*(E) Be pleased to pass any further order or directions as the Hon'ble Tribunal may deem fit in the interest of justice."*

**6** The brief facts as contended by the applicants are as under:-

**6.1** The applicants joined the respondent department as direct recruit Inspectors on different dates in the pay scale of Rs.6500-10500/- (5th Central Pay Commission) which is equivalent to PB-2 with GP Rs.4600/- in 6th CPC.

**6.2** The next promotional post of Inspector is Superintendent but those inspectors who did not get promotion before completion of 12 years' of service, were granted First Financial Up-gradation to the pay scale of Rs.7500-1200/- equivalent to GP-4800 on their completion of 12 years service as inspector under the Assured Career Progression Scale, 1999 ( in short referred as "ACP").

**6.3** Subsequently, the applicants were promoted to the grade of Superintendent on different dates and they joined said post of Superintendent on promotion without any benefit of pay fixation on promotion.

**6.4** It is contended that those applicants, who were promoted to the grade of Superintendent before completion of 10 years of service in the grade of Inspector, were granted pay scale of Rs.7500-12000/- equivalent to GP Rs.4800/- on promotion to the post of superintendent.

**6.5** The applicants placed reliance on the chart annexed as Annexure-A/2 which indicates the respective dates of their joining as inspector, the date of receipt of GP Rs.4800/-, first ACP/MACP also the date when applicants became eligible for GP Rs.5400/- and their date of promotion as Superintendent.

**6.6** The 6th CPC was introduced and brought into force w.e.f 01.01.2006 for revision of pay of persons who joined the civil services and the posts in connection with the affairs of the Union by framing the Central Civil Service (Revised Pay) Rules, 2008 in exercise of powers conferred by the proviso to Article 309 and Clause 5 of Article 148 of the Constitution of India. Accordingly, a complete revised pay structure of Pay Band and Grade Pay specified against each post or the pay-scale was introduced. Section II of part C provides revised pay structure qua Income Tax Officers/Superintendent, as per the said revision of pay, it mandates grant of GP Rs.5400/- in PB-2 after four years of regular service in GP-4800 in PB-2.

**6.7** It is stated that the benefit of Non-Functional Financial Up-gradation ( in short referred as "NFG") of Rs.5400/- has been made available mainly to the officers of Posts and Revenue department upon completion of four years of regular service in Grade Pay Rs.4800/- in PB-2, however, the department had granted it after four years of regular service, in the post of Superintendent instead of four years of regular service in GP- Rs.4800/-, which created discrimination to those who did not get promotion. Therefore, some of the officers of the department approached the Hon'ble High Court of Gujarat by way of filing SCA No.346/2018. The said SCA was allowed by Hon'ble High Court of Gujarat vide judgment dated 10.04.2018 (Annexure A/3) by considering the view taken by the Madras High Court in the case of M.Subramaniam vs. Union of India vide order dated 06.09.2010 passed in WP No.13225/2010 and directed the respondents to grant said benefit to the concerned petitioners. It is contended that the Hon'ble Madras High court in the case of M. Subramaniam held that grant of GP Rs.5400/- to the officers who had completed four years of regular service in GP 4800/- could not be denied by the respondent department. The order passed by Madras High Court was challenged before the Hon'ble Supreme Court in SCA No.883/2011 which came to be rejected by the Hon'ble Supreme Court vide order dated 10.10.2017 and upheld that the view taken by the High Court of Madras that GP Rs.5400/- has to be granted on completion of four years of continuous service in GP Rs.4800/- the review filed by the respondent department also came to be dismissed (Annexure-A/4 colly).

**6.8** It is stated that the Central Board of Indirect Taxes and Customs accepted the verdict and granted NFG of Rs.5400/- in PB-2 on completion of four years of regular service in GP Rs.4800 in compliance of the order passed by the Hon'ble High Court of Gujarat. Further it is stated that in case of some similarly placed officials who approached this Tribunal for identical prayer, by a common order dated 18.12.2019 this Tribunal directed the authorities to pass a speaking order on the representation of such officers. Thereafter, the respondent department vide its order dated 3.3.2020 granted benefit of GP Rs.5400/- to such officers. It is contended that after grant of NFG Rs.5400/- GP in PB-2 the applicants were supposed to be granted 2nd MACP in GP Rs.6600/- in PB-3 on completion of 20 years of regular service as the GP of Rs.5400/- had already been granted to them in PB-2 and GP 5400 in PB-3 are one and the same. It is also contended that the applicants, who were promoted to the post of Superintendent before completion of 12 years of service were supposed to be granted 2nd MACP in GP Rs.6600/- in PB-3 on completion of 10 years of service in the grade of Superintendent.

**6.9** It is stated that the benefit of NFG on placing in Grade Pay of Rs.5400/- was granted without reckoning the same as a Financial Up-gradation under the Modified Assured Career Progression Scheme (in short "MACP") which came into existence in supersession of the earlier ACP, vide office Memorandum dated 19.05.2009 (Annexure-A/5).

**6.10** It is stated that single Grade Pay of Rs.5400/- in PB-2 and PB-3 has been mentioned as separate grade pays under Para 8.1 of the MACP Scheme. The respondent department considered one MACP up gradation as offset with the time scale granted in GP Rs.5400/- PB-2 after completion of four years regular service in GP Rs.4800/- by treating the time scale as one MACP up gradation. As a result, the applicants have been granted 3rd MACP in the GP of 5400/- PB-3 on completion of 10 years in GP Rs.5400/- PB-2. Therefore, the applicants would not be getting any benefit even after 30 years of service under MACP Scheme which they would have been able to get after 24 years of service under ACP Scheme.

**6.11** The respondents have considered the NFG benefit as 2nd MACP as per the instructions/clarifications released by the 1st and 2nd respondent vide letter dated 02.09.2016 read with further clarification issued vide letter dated 20.06.2016 (Annexures -A/6 & 7).

**6.12** Thereafter, the applicants had submitted their representations before the respondent to treat the NFG of Rs.5400/- as independent to MACP Scheme and accordingly, grant financial up gradation in the next Higher grade pay of GP Rs.6,600/- as 2nd MACP on completion of 20 years of service (Annexure-A/8).

**6.13** The respondents by relying on the clarification dated 20.06.2016 (Annexure A/7) did not accept the demand of the applicants stating that the NFG in GP Rs.5400/- in PB-2 is to be counted as One Financial Up-gradation under MACP Scheme. In fact, in respect of some of the applicants, the department had granted 3rd MACP with GP Rs.5400/- in PB-3 without considering the representation of the applicants.

**6.14** The department had also granted 3rd MACP in PB-3 with GP Rs.5400/- on completion of 10 years of service from the date of grant **of GP Rs.5400/- in PB-2** to some of the applicants (Annexure-A/9 & A/10).

**6.15** Being aggrieved by the approach of the respondents, similarly placed officers had filed OA No.270-302 of 2020 before this Tribunal seeking direction to grant GP Rs.6600/- in PB-3 as 2nd MACP. The said OA was disposed of by this Tribunal by allowing the applicants to file their representation/additional representations before the respondents for redressal of their grievance (Annexure-A/11). Thereafter, the respondents vide impugned order dated 05.11.2020 had rejected the representation of the applicants without granting any relief mainly on the following grounds:-

(i) As per para 8.1 of Annexure-1 to OM dated 19.05.2009, consequent upon the implementation of the 6th CPC recommendation HP of Rs.5400/- is in two pay bands viz. PB-2 and PB-3. The said grade pay shall be treated as separate GPs for the grant of up gradation under MACP Scheme.

(ii) Board Letters dated 02.09.2016 r/w letter dated 20.06.2016 which has been clarified therein that non Financial up gradation in GP Rs.5400/- after four years of service in GP Rs.4800/- is to be counted as one Financial Up-gradation under MACP Schme.

(iii) Hon'ble Supreme Court in the case of Union of India and Others vs. M.V.Mohanan Nair held that the benefits under the MACP scheme to be granted in the standard hierarchy of Grade Pay/Pay Levels and not in promotional hierarchy.

(iv) In OA No.912/2016 filed by Dileep Kumar, CAT Ernakulam Bench vide its order dated 12.04.2019 by relying on para 8.1 of Annexure-1 to OM dated 19.05.2009 (MACP Scheme) had held that NFG in GP Rs.5400/- will be counted as one MACP.

Aggrieved by the aforesaid decision of the respondents impugned herein, applicants have filed the present OA.

**7.** Learned counsel for the applicant, Ms.Harshal Pandya mainly submits as under:-

**7.1** In OM dated 19.05.2009 issued by DoP&T nowhere states that grant of NFG GP Rs.5400/- on completion of four years regular service in GP Rs.4800/- is to be counted as grant of one MACP. Therefore, the respondent department had erred in wrongly counting and offsetting the grant of NFG in GP Rs.5400 towards one MACP.

**7.2** The ACP scheme dated 09.08.2009 provides 2 Financial Up gradation on completion of 12 years and 24 years of regular service in lieu of two promotions. The scheme envisaged Financial Up-gradation to the next hierarchy grade in accordance with the existing hierarchy of posts without creating new posts for the purpose.

**7.3** Thereafter, in accordance with the recommendation of the 6$^{th}$ CPC, ACP scheme came to be modified providing Financial Up-gradation on completion of 10, 20 and 30 years of regular service vide OM dated 19.05.2009 (i.e, called MACP Scheme). It would be applicable to Group "A" officers also unlike the ACP Scheme. The MACP scheme was envisaged in suppression of earlier ACP scheme with a view to provide more benefits by reducing total intervals prescribed earlier. Thus, features of the scheme needs liberal interpretation to ensure that benefits enshrined therein to avoid employees being stagnated in one Grade Pay are really extended with the financial benefits. Probably, for the said reason, the scheme makes it categorically clear that at the time of grant of Financial Up-gradation under the MACP Scheme, next higher grade pay is to be extended, giving a narrow interpretation by granting financial up-gradation to the very same grade pay on the ground that the next pay band contain the same, which resulted in defeating the objective of the scheme in as much as having no nexus with the object sought to be achieved in the real sense.

**7.4** Learned counsel further submits that as per Rule 3(6) of CCS (Revised Pay) Rules, 2008, the 'Grade Pay' is defined as "fixed amount corresponding to the pre-revised pay scales/posts". The MACP envisages mere 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, the relevant corresponding scales more particularly the GP of Rs.5400/- is repeated four times in the said scale. If the proposition evolved by the respondent department is accepted, all the financial up-gradations would be to GP Rs.5400/- and same is in complete contravention of letter and spirit of MACP Scheme to avoid stagnation. Thus, the denial of benefit of GP Rs.6,600/- as 2$^{nd}$ MACP is arbitrary, illegal and contrary to the purpose of scheme deserves to be quashed and set aside.

**7.5** It is further submitted that recently the High Court of Madhya Pradesh (Jabalpur Bench) vide judgment dated 30.04.2020 (Annexure A/12 Colly.) confirmed the view taken by the CAT, Jabalpur Bench in OA No.011/41/2016 that ".... *Grade Pay of 5400/- in PB-2 and Rs.5400/- in PB-3 is erroneously treated as separated grade pay for the purpose of grant of up gradations under MACP* (Annexure-A/14 Colly). The applicants before CAT, Jabalpur Bench are the officers of Central Board of Excise and Customs, who challenged the instructions dated 20.06.2016 and the Bench had quashed and set aside the very instructions. Thus, in light of the cancellation of the instructions dated 20.06.2016, the ground assigned by the respondent authorities is no more available and the benefit claimed by the applicant in the representation ought to be granted. Hence, orders impugned in this OA are required to be quashed and set aside.

**7.6** The applicants also placed reliance on the judgment in the case of UOI vs. Delhi Nurses Union in WP(C) No.5146/2012 dated 24.08.2012 wherein, the Hon'ble High Court of Delhi had not accepted the view of the department that GP Rs.5400/- in PB 2 and in PB 3 shall be treated as separate Grade Pay for the purpose of financial up gradation under MACP. This view was upheld by Hon'ble Apex Court (Annexures -A/13 Colly.) Learned counsel for the applicant further relies on the order passed by the High Court of Punjab and Haryana whereby the decision of CAT, Chandigarh Bench was upheld that immediate next higher grade pay of Rs.5400/- (NFG in PB-2) granted to the Superintendent is to be counted as one financial up-gradation for the purpose of MACP Scheme, is patently illegal and are null and void in law, Therefore, the reason accorded by the respondent in denying the benefit of Rs.6600/- as 2nd MACP benefit to the present applicants are erroneous and the impugned decision deserves to be quashed and set aside.

**7.7** It is submitted that the respondent failed to appreciate the observation and direction contained in para 15 of judgment passed by Hon'ble High Court of Gujarat in SCA No. 5868/2020 and allied matter dated 09/03/2020 in its true spirit and erroneously rejected the claim of the applicant. In the said para 15 the Hon'ble High Court clearly speaks about non-examination of a case on merits and relegation to the authorities for fresh consideration. Mere observations on some issues cannot be termed as settlement or conclusion of it, that too, when case was relegated to the authorities. Thus, the respondent grossly erred in rejecting the claim of applicants based on the judgment which had supported their stance.

**7.8** It is submitted that in case of UOI Vs. M V Mohanan Nair the Hon'ble Apex Court held that the benefits under MACP Scheme is to be granted in the standard hierarchy of grade pay / pay level and not on promotion hierarchy. In fact, the applicants have prayed for granting of benefits under MACP Scheme in the hierarchy of grade pay and not in promotion hierarchy. According to learned counsel for the applicant, the said judgment is not applicable to the facts of the present case.

**7.9** Learned counsel placed reliance on judgment passed by Hon'ble High Court of Delhi in case of Hariram & Anr. v/s Registrar General decided on 20.12.2017 wherein it has been held that the legal issue has been settled in terms of mandating that the benefit of 2$^{nd}$ or 3$^{rd}$ MACP shall not be offset against the NFU granted under 6$^{th}$ Pay Commission. Further, she placed reliance on judgments passed in case of Union of India v/s S Balakrishnan by Madras High Court in WP No.11535 of 2014 dated 16.10.2014 whereby the view of respondent department to treat GP 5400/- in PB-2 and Rs.GP 5400 in PB-3 as separate Grade Pay for the purpose of financial upgradation under MACP was rejected. Further reliance has been placed on judgment passed by Hon'ble Apex Court in the case of State of Uttar Pradesh & Ors v/s Arvind Kumar Srivastava & Ors decided on 17.10.2014 in Civil Appeal No.9849 of 2014 and the case of Government of NCT, Delhi & Ors v/s Somvir Rana (TGT ENG) & Ors wherein it has been held that in relation to pay scale and grant of pay related benefits that they have to be construed as being "in rem" and not " in personam" since in such legal disputes it is essentially the policy of the government i.e. challenged and if any action on the basis of such policy or the policy itself is overturned and negated then the benefit has to be granted to all similarly situated employees across the Board and that the government department ought not to force individual employees to approach judicial forum to agitate settled legal issues which directly leads to multiplicity litigation on the same identical cause which ultimately are governed by a binding decision of a higher judicial forum. Therefore, in the case of applicants, the respondents ought to have extended the benefit of GP 6600/- as 2$^{nd}$ MACP as was extended to the other similarly placed officials.

**8.** Per contra, the respondents have filed their reply and denied the contention of the applicants.

**8.1** The respondents have raised preliminary objections to entertain this OA as the applicants have agitated the matter after lapse of almost 9 years. No explanation has been offered by the applicants for the long delay of almost 9 years caused in challenging such alleged inaction on the part of respondents.

**8.2** It has been contended that under the provisions of the erstwhile ACP scheme of 1999, Financial Up-gradation was granted at the relevant time in the existing promotional hierarchy, which gave rise to uneven benefit to employees falling in the same pay scale as various organizations adopted different hierarchal pattern. Consequently, employees working in organization having greater number of intermediate grades suffered because Financial Up-gradation under ACPS placed them in lower pay scale vis-à-vis similarly placed employee in other organizations that had lesser intermediary grades.

Subsequently, the ACP Scheme was replaced by Modified ACP (MACP) scheme by the DoP&T vide OM dated 19.05.2009 (Ann. R/2) which provided for three up-gradations after 10, 20 & 30 years respectively in the successive grade pay scale in the hierarchy of recommended revised pay band and grade pay as prescribed in the CCS (RP) Rules and not in the promotional hierarchy as was available in the ACP scheme.

**8.3** It is submitted that the in para 8.1 of MACP Scheme, it has been provided that the grade pay Rs.5400/- in PB-2 and Rs.5400/- in PB – 3 shall be treated as separate grade pay for the purpose of grant of up-gradation under the MACP Scheme.

The superintendent in the grade pay of Rs.4800 gets Non-Functional Grade Pay in GP Rs.5400/- in PB-2 after 4 years of regular service. In the present case the applicants are praying that NFG granted to them should not be taken into the account while granting the benefit of MACP Scheme, i.e., they are basically claiming financial up-gradation in MACP in the promotional hierarchy which is against the MACP Scheme.

It is submitted that ***Central Civil Service (Revised Pay) Rules, 2016 issued after acceptance of the recommendation of the 7th CPC (pay matrix) have also placed both the grades in different pay levels. Grade Pay of Rs.5400/- in PB-2 has been placed in pay level 9 with initial pay of Rs.53,100/- and Grade Pay of Rs.5400/- in PB-3 has been placed in pay level 10 with initial pay of Rs.56,100/-.*** Therefore, the claim of the applicants were correctly regretted vide impugned decision.

**8.4** It is contended by the respondents that on a reference from the office of Chief Controller of Accounts, CBEC, the DoP&T vide their clarification dated 26.07.2010 (Annexure R/3), had clarified that the benefit of Non-Functional Up-gradation granted to the Superintendents (Group B) officers on completion of 4 years of service would be treated/viewed as up-gradation in terms of para 8.1 of the Annexure to OM dated 19.05.2009 and the same would be offset against one Financial Up-gradation under MACP Scheme.

**8.5** The learned counsel further submits that to make the issue more clear and uniform, the DoPT published a comprehensive FAQ on MACP Scheme on its website on 1.4.2011 wherein at FAQ no. 16 it was clarified that Non-functional up-gradation would be viewed as one financial up-gradation for the purpose of MACPS in terms of para 8.1 of MACP dated 19.5.2009. In addition, the board in consultation with DoP&T issued a circular dated 20/05/2011 (Ann. R/4) that there would be no effect of grant of Non-Functional Scale in erstwhile ACP Scheme. However, in terms of para 8.1 of the Annexure – I of MACP, financial up-gradation granted in the grade pay of Rs.5400/- in PB-2 and PB-3, would be treated as separate up-gradation. The board again clarified vide letter dated 04.06.2014 that NFG granted to Superintendents would be counted / offset against the financial up-gradation MACP Scheme.

**8.6** It is further submitted, pursuant to the directions issued by the Hon'ble High Court of Madras vide order dated 08.12.2014 in WP No.19024 of 2014 and M.P. No. 1/2014 (Ann. R/5) the case of original applicant/petitioner i.e. Shri R Chandrasekaran was referred to DoP&T for taking appropriate action. In this regard learned counsel further submits that initially, DoP&T vide letter dated 06.05.2015 opined that since Shri R Chandrasekaran got only one promotion and 2nd ACP in grade pay of Rs.5400/- in his service career prior to implementation of MACP schemes w.e.f. 01.09.2008, he is entitled to the grant of 3rd MACP in the grade pay of Rs.6600/- under MACP with effect from 04.06.2012 on completion of 30 years of services. However, on re-examination of the issue, the DoP&T, further clarified that the grant of Non Functional Grade Pay of Rs.5400/- in PB-2 to the Superintendents need to be counted as one financial up-gradation for the purpose of MACP scheme.

**8.7** It is submitted that the initial decision of DoP&T dated 06.05.2015 was again examined by CBEC and it was observed that due to administrative error by field offices, the benefit of 3rd MACP which was wrongly granted to the officers needs to be withdrawn as the same is not in accordance with the MACP Scheme as also more in consonance with their second opinion dated 02.05.2015. Accordingly, vide CBEC's clarification dated 20.06.2016 Commissionerates have withdrawn the GP of Rs.6600/- (i.e. 3rd MACP) which was erroneously granted to Superintendents. It is submitted that the respondent no.4 herein in compliance of directions issued by this Tribunal in OA 294/2020 with MA 275/2020 dated 07.09.2020 considered the representations of applicants herein and by referring to (i) the clarification dated 20.06.2016 issued by CBEC, (ii) provision contained in para 8.1 of Annexure I of MACP Scheme (iii) DoP&T's OM dated 23.03.2020 (iv) CBEC Board's letter dated 24.07.2020 and by referring the judgments passed by Hon'ble Apex

Court in M V Mohanan Nair case, the said representations of applicants were disposed of without any relief vide Impugned decision dated 05.11.2020 (Annexure A./1 Colly), the said decision is just and in consonance with terms of MACP Scheme. Therefore, the applicants are not entitled for any reliefs as sought in this OA.

**8.8** The learned counsel further submits that the Hon'ble Supreme Court in case of Union of India & Others Vs. M.V.Mohanan Nair vide judgment dated 05.03.2020 in Civil Appeal No.2016 of 2020, has set aside all the impugned orders of the High Courts and allowed the appeals preferred by the Union of India and upheld the government policy that benefit under MACP Scheme ought to be granted in the standard hierarchy of grade pays/pay levels and not in the promotion hierarchy.

The Apex Court has also held that the ACP scheme which is now superseded by the MACP Scheme is a matter of government policy. Interference with the recommendation of an expert body like the pay commission and its recommendation for the MACP would have serious impact on the public exchequer. It is further held in the said judgment that the recommendations of the pay commission of the MACP Scheme have been accepted by the government and implemented, and there is nothing to show that the scheme is arbitrary, or unjust warranting interference.

In the judgment it has also been stated that without considering the advantages in the MACP scheme, the High Court erred in interfering with the government policy by simply placing reliance upon the Rajpal case. It is also held by Hon'ble Apex Court that Rajpal case cannot be treated as precedent. Therefore, the learned standing counsel submits that the orders/judgment based on Rajpal's case, i.e., S. Balakrishnan case is not applicable to the present case. Further it is submitted that the order passed in case of R. Chandrasekaran cannot be termed as order in rem. As such the respondents have withdrawn the grant of benefit of 3rd MACP in the case of said R Chandrasekaran and aggrieved by it, he has filed another OA before CAT, Chennai Bench wherein no relief has been granted till date.

**8.9** It is also stated that after considering various directions issued by different Bench of this Tribunal as also Hon'ble High Courts, including the order passed by CAT Principal Bench in OA 2806/2016 dated 26.02.2020 in the case of All India Association of Central Excise Gazetted Executive Officer, Delhi & Ors v/s Union of India & Ors, as also the order passed in the case of Hari Ram & Anr v/s Registrar General, Delhi High Court etc, the CBEC sought further clarifications/opinions from the competent authority i.e. DoP&T. In response to it, DoP&T vide its instructions/clarification dated 12.01.2021 reiterated earlier position that NFU granted in GP 5400/- in PB-2 needs to be offset against one Financial Up gradation as per MACP policy. Further, the DoP&T clarified that the judgment/orders are not in consistent with the MACP Scheme, requires to be challenged in higher court. It is further contended that on receipt of DoP&Ts clarification dated 12.01.2021, the respondents have filed necessary review applications and writ petition in respective OAs/Writ Petitions before the appropriate Tribunal and High Court. Therefore, learned counsel for the respondents submits that the orders and judgments relied upon by the applicants are not helpful to them since same are inconsistent with the MACP policy. The respondents have filed review, writ petition and said petitions are now sub judice before various courts. The applicant is not entitled for any reliefs as sought in this OA.

**8.10** Learned Counsel for the respondents submits that in similar case, other applicants had also preferred OAs No.653/2016 and other connected OAs before this Tribunal. The said OAs were decided and dismissed vide order dated 22.09.2017 mainly on the ground that (i) point that arise for consideration was pending consideration before the Hon'ble Apex Court in the case of SLP No.21803/2014, i.e., case of UOI Vs. M. V. Mohanan Nair and other 5 SLPs. (ii) the judgment passed by Hon'ble High Court of Punjab and Haryana in Rajpals's case are stayed by the Hon'ble Supreme Court (iii) There exists conflicting views of the different High Courts. Aggrieved by the said order dated 22.09.2017 passed by this Tribunal, the applicant therein had filed SCA No. 5868/2020 and other SCAs challenging the decision of this Tribunal before the Hon'ble High Court of Gujarat and vide common order dated 09.03.2020, the Hon'ble High Court has remanded the said OAs to this Tribunal for fresh consideration of merits in wake of the pronouncement of the judgment dated 05.03.2020 by Hon'ble Apex Court in M. V. Mohanan Nair.

Pursuant to the direction issued by the Hon'ble High Court, this Tribunal considered the said OAs afresh on merit and vide order dated 25.01.2021 dismissed the said OAs. The said order dated 25.01.2021 passed by this Tribunal in identical OAs are applicable in the present case also. Therefore, the applicants are not entitled for any relief sought in this OA.

**8.11** The Learned Counsel further submits that as per the clarification issued by DoP&T dated 12.01.2021 (Ann. R/10) and letter dated 13.07.2021 had clarified that NFU granted in GP Rs.5200/- in PB-2 needs to be off set in one financial up-gradation as per MACP Policy and further clarified that judgments were not consistent with MACP Scheme and required to be challenged in higher courts. It is further stated that the respondents have filed various Review Petition before Hon'ble High Court of M.P. in Jabalpur on the subject as also the respondents have challenged the order dated 04.03.2020 passed in OA No.1621/2018 before the Hon'ble High Court of Karnataka. Further, it is submitted that the judgment and order relied upon by the applicant are not applicable in light of law laid down Hon'ble Apex Court in the case of Mohanan Nair as well the instructions issued by Competent Authority under the MACP Scheme with respect to count of benefit of NFU in GP Rs.5400 in PB-2 needs to be off set against one financial up-gradation as per MACP Policy.

**9.** The applicants have filed their rejoinder reiterating the facts in the OA. Additionally it is stated that the respondent department had never issued any order, letter or communication to the applicants informing that the NFU of GP Rs.5400/- granted has been offset against the second MACP due to the applicant. In this regard, applicants placed reliance on the revised pay fixation order dated 29.04.2013, 22.11.2011 (Annexure I to the rejoinder).

Further, it is stated that though 5400/- in PB-2 and 5400 in PB-3 is to be treated as separate, GP 6600 is the next higher grade pay required to be granted to those who are receiving GP Rs.5400/-. Counsel for the applicant also argued that it is a complete misinterpretation of the MACP Scheme by the authorities, that a Superintendent receiving Rs.5400/- in PB-2 would receive Rs.5400/- in PB – 3 as financial up gradation. According to the counsel for applicant the up gradation in same grade pay would completely wipe out the purpose and intention of the whole MACP Scheme. The act of the respondent department in offsetting the NFU as one MACP is nothing but a complete illegality and arbitrariness meted out to the applicant. Further it is stated that the CBIC had in fact discussed all the situation in their reply to one Shri V.S.Patil Kulkarni under RTI Act.(Annexure A/II in rejoinder), but now with a view to avoid liability, the claim of the applicants have been denied by the respondents.

**10.** At this stage, it is appropriate to mention that identical issues raised in this OAs had come up for consideration before this Tribunal in OA 581/2016 and other connected matters filed by similarly placed officers of respondent department which came to be dismissed by this Tribunal vide order dated 25.01.2021. Thereafter, another OA No.511/2020 on the same issues raised herein was filed by other similarly placed officer of the respondent department, the said OA also came to be dismissed by order dated 18.08.2021 on the same lines of OA No.581/2016. Therefore, we deemed it appropriate to refer to the relevant observations and findings in OA No.581/2016 decided on 25.01.2021, which is extracted as below :-

“ ***10.2***. *It is noticed that the Government has considered the recommendation of the 6th Central Pay Commission for introduction of Modified Assured Career Progression Scheme (MACPS) and had accepted the same with further modification to grant three Financial Upgradations under the MACPs in the standard hierarchy of Grade Pay/Pay Levels instead of promotional hierarchy in supersession of earlier ACP Scheme. Accordingly, the DoP&T had issued O.M. dated 19th May, 2009 which is known as MACP Scheme. The Clause 9 of the said Scheme reads as under:*

***“Clause 9. Any interpretation/clarification of doubt as to the scope and meaning of the provisions of the MACP Scheme shall be given by the Department of Personnel and Training (Establishment-D). The Scheme would be operational w.e.f. 01.09.2008. In other words, Financial Upgradation as per the provisions of the earlier ACP Scheme (of August, 1999) would be granted till 31.8.2008.”***

*From the aforesaid Clause 9 of the said Scheme, it can be seen that the DOP&T (Establishment-D) is the competent authority for interpretation of any part of the Scheme and clarification of any doubt as to the scope and meaning of the MACP Scheme.*

***10.3*** *Further it is noticed that the details of the MACP Scheme and conditions for grant of the financial up-gradation under the Scheme are given in Annexure-I of the said OM dated 19th May, 2009. The Para 8 and 8.1 of Annexure-1 to the MACP Scheme reads as under:*

***“8. Promotions earned in the post carrying same grade pay in the promotional hierarchy as per Recruitment Rules shall counted for the purpose of MACPs.***

***8.1 Consequent upon the implementation of Sixth CPC’s recommendations, grade pay of***

> ***Rs. 5400 is now in two pay-bands viz., PB-2 and PB-3. The grade pay of Rs. 5400 in PB-2 and Rs. 5400 in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under MACP Scheme"***

**11.** *In the present case, it emerges from the record that after introduction of MACPs, the Department of Revenue, Central Board of Excise and Customs, dated 16.9.2009 with the approval of the Department of Expenditure issued clarification on grant of Grade Pay of Rs.5400/- in PB-2 on Non-functional basis to Group 'B' Officers of CBEC including Superintendent of Customs after four years of regular service in the Grade Pay of Rs. 4800/- in PB-2 to the effect that the higher Grade Pay of Rs.5400/- in PB-2 on Non-functional basis is not linked to vacancy and may be given with retrospective w.e.f. , i.e., 01.01.2006 provided the officer concerned has (i) completed minimum four years of regular service as on 01.01.2006 as Custom Appraiser/ Superintendent of Central Excise/Superintendent of Customs (P) irrespective of the pay scale attached to the post, and (ii) is clear from vigilance angle.*

*Accordingly, the applicants herein who had completed four years of regular service as Superintendent, they were granted Grade Pay of Rs. 5400/- in PB-2 on Non-functional basis under the MACPS. Evidently, the applicants were granted financial up-gradation by way of Non-Functional Grade of Rs.5400/- in PB-2 w.e.f. 01.01.2006 as per the terms of MACP Scheme and were accordingly placed in respective Grade Pay.*

*Here, it is apt to mention that the terms and conditions with regard to the pay of the applicants are governed under Central Civil Services (Revised Pay) Rules, 2008, Further, Rule – 3 of these Rules provides definitions. According to the Rule – 3 (4) "present scale" in relation to any post/grade specified in column 2 of the First Schedule means the scale of pay specified against that post in column 3 thereof. Rule – 3 (5) defines that "pay in the pay band" means pay drawn in the running pay bands specified in column 5* *of the First Schedule and Rule 3(6) stipulates that **"grade pay" is the fixed amount corresponding to the pre-revised pay scales/posts.***

*The First Schedule – Part A, Section – I of the said Rules indicates the revised pay bands and grade pay; the relevant revised pay band and corresponding grade pay are extracted below for ready reference:*

| Present Scale | | | Revised Pay Structure | | |
|---|---|---|---|---|---|
| Sr. No. | Post /Grade | Present Scale | Name of Pay band/Scale | Corresponding Pay Bands/ Scales | Corresponding Grade Pay |
| (1) | (2) | (3) | (4) | (5) | (6) |
| 14 | S-13 | 7450-225-11500 | PB-2 | 9300-34800 | 4600 (Inspector) |
| 15 | S-14 | 7500-250-12000 | PB-2 | 9300-34800 | 4800 (Superintendent) |
| 16 | S-15 | 8000-275-13500 | PB-2 | 9300-34800 | 5400 (NFG given after four years) |
| 17 | New Scale | 8000-275-13500 (Group A Entry) | PB-3 | 15600-39100 | 5400 (on completion of 24years of service) |
| 18 | S-16 | 9000 | PB-3 | 15600-39100 | 5400* |
| 19 | S-17 | 9000-275-9550 | PB-3 | 15600-39100 | 5400* |
| 20 | S-18 | 10325-325-10975 | PB-3 | 15600-39100 | 6600 (Claimed as 3rd MACP) |

**Not applicable in the case of CBEC*

**12.** *It is an admitted fact that the applicants joined as Inspector of Central Excise between 01.01.1982 and 31.08.1984. Thereafter, they were promoted to the post of Superintendent in the year 1996-2002 ( in the pay scale of Rs. 7500 – 250 - 12000 in the 5th CPC scale & the corresponding scale in 6 th CPC is PB– 2, Pay Scale 9300 – 34800 with the Grade Pay 4800). On introduction of 6th CPC and as per order / clarification issued by Department of Revenue CBEC dated 16.09.2009 **all the applicants on rendering 4 years of regular service as Superintendents were granted the benefit of Non-Functional Grade in PB-***

***2 GP 5400/- Pay Scale 9300- 34800 w.e.f. 01.01.2006 (respective dates are stated herein below).***

***At that relevant time, ACP Scheme of financial up-gradation was in vogue. In accordance with the ACPS, in the year 2006, the applicants were also granted 2nd ACP of Pay Scale 15600 – 39100 in PB-3 with GP 5400/-, on*** *completion of 24 years of service.* ***It may be mentioned here that the PB-3 with Grade Pay 5400/- is a new scale at the Entry Grade for "Group – A service" as mentioned in the first Schedule (Part-A, Section-1, Serial No.17)***

***Further, it is seen that on completion of 30 years of services, the applicants were also granted benefits of 3rd MACP in PB-3 GP 6600/- in the year 2012*** *and thereafter* ***in the year 2014-2016, they were promoted as Assistant Commissioners.***

**13………….**

**14…………**

**14.1** *At this stage, it is also appropriate to take note that on a reference from the office of the Chief Controller of Accounts, CEBC whether the grant of grade pay of Rs. 5400/- in PB-2 alongwith the benefit of one increment @ 3% may be treated as ACP. In response to it the DoPT vide their communication dated 21.7.2010/26.07.2010 (Annexure R-4) had clarified that:*

**"*the benefit of non-functional upgrading granted to the Superintendents (Group B) Officers on completion of years of service would be treated/viewed as upgradation in terms of para 8.1 of OM dated 19.5.2009 and the same would be off set against one Financial Upgradation under the MACP Scheme*".**

**14.2** *It is further noticed that the DoP&T published a comprehensive FAQ on MACP Scheme on 1.4.2011 wherein at FAQ No. 16, the DoP&T clarified as under:*

| Sr. No | Question | Answer |
|---|---|---|
| 16 | Whether "non-functional scale of Rs. 8000- 13500 ( revised to grade pay of Rs. 5400 in PB-3) would be reviewed as one Financial Upgradation for the | Yes, in terms of pr 8.1 of Annexure-I of MACPs dated |

| | | |
|---|---|---|
| | **purpose of MACPS ?** | **19.5.2009.** |

**14.3** *Thereafter, on 20.05.2011 the CBEC issued a letter to the Chief Commission/DGs under CBEC had taken note of the fact that NFG of Rs.5400/- in PB-2 granted between 01.01.2006 and 31.08.2008, the same is not counted under ACP. However, in terms of para 8.1 of Annexure of MACPS, financial up-gradation granted in the grade pay of Rs.5400/- in PB-2 and PB-3 would be counted separate up- gradation and would be offset against the financial up-gradation under the scheme. This contention has further been reiterated in the communication of CBEC of even No. dated 04.06.2014.*

***14.4*** *Thus, the competent authority under the MACP Scheme i.e. DoPT (Establishment–D) as also the CBEC has clarified in no uncertain terms that the benefit of Non-functional Grade granted to the Superintendent (Group-'B') officers, after completion of 4 years would be treated/viewed as upgradation in terms of para 8.1 of Annexure-I of OM dated 19.5.2009 and the same would be off set against one financial upgradation under MACPS and further that the grade pay of Rs. 5400 in PB-2 and Rs. 5400 in PB-3 shall be treated as separate grade pay for the purpose of grant of upgradations under MACP Scheme. In view of this, the submission of the applicant that an exception be made for those who got their 2nd ACP between 01.01.2006 and 31.08.2008, is not tenable.*

***14.5*** *It is noticed that in spite of aforesaid clarification issued by the competent authority, the various Commissionerate offices of Central Excise, Customs and Service Tax ignored the mandate under condition No.8.1 of the Annexure –I to MACP Scheme and extended the 3rd MACP in Grade Pay of Rs.6600/- in PB-3 to the Superintendent which was subsequently withdrawn by the respondents CBEC as per instruction/ clarification issued by the DoPT. However, grant of 3rd MACP and its subsequent withdrawal, resulted in various litigations. In this regard, it suffices to refer the observation of the Hon'ble High Court of Madras passed in the case of R.Chandrashekaran v/s. Union of India & Ors., W.P No.19024/2014 decided on 08.12.2014 which reads as under :*

***"15. It is a matter of record that different departments have interpreted the clarification in different manner and the same resultant in unfortunate situation.***

***16. The Customs and Central Excise Department has granted benefits of MACP to the employees like petitioner herein without taking into account the Financial Upgradation given on 'Non- functional scale'. The departments have earlier maintained that only functional promotions would be counted for the purpose of extending the benefits of the ACPS. The employees were given all benefits by taking a position that there was no provision for counting 'Non-functional scale' for the purpose of the ACPS. Subsequently, on the basis of the further clarification the benefits were all withdrawn. This resulted in filing several Original Applications before the Central Administrative Tribunal. The Central Administrative Tribunal, Chandigarh Bench rejected the contentions taken by the respondents in OA No.1038/2010. The said decision was upheld by the Hon'ble High Court of Punjab & Haryana. Even thereafter, several orders were passed by the respondents. We have considered similar writ petitions. In case the concerned departments took earnest efforts to codify all these circulars issued earlier and to issue a fresh circular explaining the nature and scope of MACPS and as to whether Non-functional scale would be counted for the purpose of ACPS, it would be possible to award cases like this and future cases that are bound to come. We are therefore of the view that instead of deciding the matter one way or the other it would be in the interest of all the parties to direct the Department of Personnel, Public Grievances and Pensions, to look into the issue and to take a decision in the light of MACP Scheme."***

**14.6** *As noted hereinabove, after the aforesaid directions issued by Hon'ble High Court of Madras in R. Chandrashekaran case, initially the respondents vide their letter dated 26.5.2015 directed the Commissionerate of Central Excise Chennai to grant the 3rd Financial Up-gradation in the Grade Pay of*

*Rs.6600/- to said Shri R. Chandrasheker. Subsequently, as per the DOPT's clarification, the said letter dated 26.5.2015 was withdrawn and it was further clarified that the grant of Non-functional Grade Pay of Rs.5400/- in PB-2 to the Superintendent needs to be counted as one Financial Up-gradation for the purpose of MACP Scheme by the Government vide order dated 20.6.2016 (which is impugned herein).*

*For ready reference, the said impugned order/letter 20.06.2016 is reproduced as under:-*

*"F.No.A-23011/25/2015-Ad.IIA*
*Government of India Ministry of Finance, Department of Revenue,*
*Central Board of Excise and Customs*
*xxxxxxxxxxx*

*North Block*
*New Delhi,*
*the **20th June, 2016***

*To,*
*All the Cadre controlling Authorities under CBEC*

*Subject: Clarification on MACP – Grant of 3rd MACP to the Superintendent in CBEC who were granted non-functional grade pay of Rs.5400/- in Pay Band – 2 – Reg.*

*Sir/Madam,*

*I am directed to say that the Board is in receipt of various references/representations from the field offices/officers seeking clarifications on the issue of grant of 3rd Financial Upgradation under MACP Scheme to Superintendents who were granted non-functional grade pay of Rs.5400/- in Pay Band-2.*

*2 The matter regarding counting of non-functional Grade pay of Rs.5400/- in Pay Band -2 to the Superintendents as one Financial Upgradation for the purpose of MACP Scheme has been re-examined in consultation with Department of Personnel & Training (DOPT). DOPT has now advised in consultation with Department of Expenditure **that the grant of non-functional grade pay of Rs.5400/- in PB-2 to the Superintendent needs to be counted as one Financial Upgradation for the purpose of MACP Scheme**. DOPT has drawn attention to the specific provision in Para 8.1* *of Annexure-I of OM No.35034/3/2008-Estt.(D) dated 19th May, 2009 read with FAQ No.16 (copy enclosed) which indicate that the Non-functional scale in Grade Pay of Rs.5400/- in PB-2 is to be treated as a Financial Upgradation under MACP Scheme. DOPT has also advised that court cases including the case of R Chandrasekaran may be agitated/defended as per MACP Scheme vide DOPT O.M. dated 19.5.2009.*

*3* ***The Board's letter of even number dated 26.05.2015 addressed to Chief Commissioner of Central Excise, Chennai Zone in the case of Shri R Chandrasekaran has been treated as withdrawn****.*

*4 All Cadre controlling Authorities are requested to take appropriate action to settle MACP cases accordingly. Also, appropriate action may be taken to defend the cases, emerging out of the case of Shri R Chandrasekaran, on behalf of Union of India.*
*This issues with the approval of Chairman, CBEC.*

*Yours faithfully,*

*(A K Quasin)*
*Deputy Secretary to*
*Government of India."*

**14.7** *It is noticed that pursuant to aforesaid decision dated 20.06.2016, respondents have withdrawn the grant of benefit of 3rd MACP in case of R Chandrasekaran and also implemented the said decisionby taking action in the case of applicants who are similarly placed and the benefit of 3rd MACP granted to them were also withdrawn by way of recovery. The core ground advanced by the respondents to do so is the mandate of para 8.1 of MACP policy, which stipulates that any financial up-gradation needs to be considered as one separate financial up-gradation under the MACP.*

***14.8*** *At this stage, it is appropriate to refer the recent dictum of Hon'ble Apex Court in the case of Union of India V/s. M.V.Mohanan Nair reported in (2020) 5 SCC 421(for brevity referred as 'M.V.Mohanan case'), wherein Hon'ble Apex Court has considered batch of appeals filed by Union of India assailing different orders / judgments passed by the various Hon'ble High Courts dismissing petitions filed by Union of India thereby upholding decisions rendered by different Benches of the Central Administrative Tribunal granting Financial Upgradation of Grade Pay in the next promotional* *hierarchy by placing reliance upon the judgment passed by Hon'ble High Court of Punjab & Haryana in the case of Union of India v/s. Rajpal. The Hon'ble Apex Court considered the question whether the MACPS entitles financial up-gradation to the next Grade Pay or to the Grade Pay of the next promotional hierarchy.*

*It is noticed that while setting aside the orders of the respective High Courts in the said. M. V. Mohanan Nair case (supra) the Hon'ble Apex Court by upholding the Government Policy, has held that '**benefit under MACP Scheme are to be granted in the standard hierarchy of Grade Pays/Pay Levels and not in the promotional hierarchy'**. Further, in para 56 of the said judgment, the Hon'ble Apex Court held as under :*

***'56. The ACP Scheme which is now superseded by MACP Scheme is a matter of government policy. Interference with the recommendations of an expert body like the Pay Commission and its recommendations for the MACP Scheme, would have a serious impact on the public exchequer. The recommendations of the Pay Commission of the MACP Scheme have 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 Court's erred in interfering with the Government's Policy in accepting the recommendation of the 6th Central Pay Commission by simply placing reliance upon the Rajpal's case (Union of India v/s. Rajpal). The impugned orders cannot be sustained and are liable to be set aside.'***

14.9 *In the present case, the respondents have followed the condition stipulated in para 8.1 of Annexure A/1 to MACP Scheme, which is policy of the government and the competent authority i.e. DoP&T has repeatedly issued clarifications to treat the Non Functional Grade as separate Grade Pay for the purpose of grant of benefit under MACP. The Hon'ble Apex Court categorically held in M V Mohanan Nair (supra) that the said MACP Scheme cannot be interfered with since there is no infirmity in the scheme. Under the circumstances, the said observation of the Hon'ble Apex Court is squarely applicable in the present case.*

*It is also apt to mention that the Hon'ble High Court of*

*Gujarat while remanding the present OA also observed that in light of law laid down in M.V. Mohanan Nair Case nothing much left for this Tribunal to adjudicate the issue raised by the applicant. In view of the said observation, in our considered view the submission of the counsel for the applicant that said judgment i.e. M V Mohanan Nairis not applicable in the present case is not tenable and same is rejected.*

***14.10*** *It is the specific case of the applicants that in 2012, similarly place official working at Chennai namely one Mr. S. Balakrishnan approached the Madras (now Chennai) Bench of this Tribunal by filing OA No. 280/2012 seeking fixation of his pay under 3rd MACP in Grade Pay of Rs.6600/- on completion of 30 years of his services. The said OA was allowed in favour of Mr. S. Balakrishnan as per order dated 22.07.2013. Aggrieved by it, Union of India had preferred writ petition No.11535/2014 before the Hon'ble Madras High Court, and the said writ petition was dismissed vide order dated 16.10.2014 with the concluding observation in para 18 of the said order, which reads as under :*

> ***"18. The Central Admininstrative Tribunal correctly interpret clause 8 and 8(1) of the MACPs and quashed the impugned orders and resorted the earlier orders granting benefit to the respondent 1 to 3. Similar view was taken by the Central Administrative Tribunal, Chandigarh Bench in OA No.1038 of 2010 and it was upheld by the Hon'ble High Court of Punjab and Haryana by its judgment dated 19.10.2011 in CWP No.19387 of 2011. We are therefore, the considered view that the impugned order does not called for interference by exercising the power of judicial review."***

*It is further stated by the applicants that aggrieved by the aforesaid judgment, the SLP was preferred by Union of India and the Hon'ble Supreme Court vide its order dated 31.08.2015 dismissed the said SLP (c)No.15396/2015 illumine.*

*It is also argued by the counsel for the applicants that the SLP filed against the judgment passed by the*

*Hon'ble High Court of Punjab and Haryana by its judgment dated 19.10.2011 in CWP No.19387 of 2011 i.e.,* ***case of Union of India versus Rajpal*** *was also dismissed in limine, and therefore, the decision of Chennai Bench of this Tribunal dated 22.07.2013 in OA No.280/2012 allowing the benefits of 3rd MACP up-gradation in PB -3, GP Rs.6600/- in S. Balakrishnan Case becomes final and attend finality, therefore it is completely binding upon the present respondents. Thus, the applicants herein who are identically and similarly placed as like S.Balakrishnan, they are also entitled for 3rd MACP in PB-3, GP Rs.6600/-.*

**15.** *Now, in view of the pronouncement of the judgment by the Hon'ble Supreme Court in the case of* ***Union of India vs. M. V. Mohanan Nair reported in (2020) 5 SCC 421****, the aforesaid submission of the applicant falls flat. The Hon'ble Supreme Court in M. V. Mohannan (supra) in categorical terms held that the decision rendered in* ***Union of India vs. Rajpal case ought not to have been quoted as precedent having been dismissed on the ground that no sufficient cause was shown for the delay in re-filing****. The Hon'ble Supreme Court observed thus,*

***"49. 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 thatthe 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. It, therefore, follows that when no reason is given, but a special leave petition is dismissed simplicitor, it cannot be said that there has been a declaration of law by this Court under Article 141 of the Constitution. [underlining added]***
>
> ***50. Raj Pals case having been dismissed on the ground that no sufficient cause was shown for the delay in re-filing Raj Pal case ought not to have been quoted as precedent of this Court by the High Court***.*"*

***15.1*** *Thus, the trite principle of law is that an order rejecting the Special Petition at the threshold without giving detailed reasons does not constitute any declaration of law or a binding precedent. Therefore, the basic premise seeking the reliefs as prayed for in the present OA on the strength of the decision of the Hon'ble High Court of Madras in S Balakrishnan (supra), which decision was rendered relying on the decision of the judgment of the Hon'ble High Court of Punjab and Haryana in the case of Union of India vs. India Vs. Rajpal, cannot be said to be decision on merit. It is also pertinent to mention at this stage that the SLP preferred by the Union of India in the case of S.Balakrishnan bearing SLP No. 15396 of 2015 also came to be dismissed at the threshold. Therefore, it cannot be said the Hon'ble Apex Court approved the judgment passed by High Court of Madras since the SLP was dismissed in limine. Moreover, undisputedly the order passed in OA filed by S.Balakrishnan was based on Rajpal (supra) case and as noted hereinabove the Hon'ble Apex Court* *declared that judgment passed in Rajpal case cannot be treated as a precedent. Therefore, the judgment/order in the case of S.Balakrishnan (supra) cannot be treated as a precedent and thus does not help the applicants in any manner.*

***15.2*** *Further, the case relied on in the case of and R. Chandrasekaran (supra) by the applicant also does not stand in favour of them. It is noticed that in the said case the applicant i.e. R Chandrasekaran, who was similarly placed employee to that of Shri S Balakrishnan approached the Madras Bench of this Tribunal by filling OA 675 of 2013 seeking the very same reliefs. The said OA came to be dismissed on 24.2.2014. Being aggrieved by the said dismissal, the said R. Chandrasekaran preferred Writ Petition in WP No. 19024 of2014 before the Hon'ble High Court of Judicature at Madras. In the said Writ Petition, the Hon'ble High Court though set aside the order of the Madras Bench of the CAT, did not grant any relief to the applicants but sent the matter to the Department of Personal, Public Grievances and Pension for their fresh consideration. Pursuant to this remand, the government vide letter dated 26.5.2015 directed the Chief Commissioner to implement the order and to grant the third financial up-gradation in the grade pay of Rs. 5400/- to Shri R. Chandrasekaran. Subsequently, vide clarification dated 20.6.2016, (which is also impugned in the present OA) the CBEC in consultation with DOPT directed for withdrawal of the said benefit of grant of 3rd MACP in PB-3 GP Rs.6600/- to said Shri R Chandrasekaran.*

*At this stage, it is also apt to mention that aggrieved by said order of withdrawal dated 20.06.2016 Shri R Chandrasekaran has filed another OA No.1380/2016 before CAT, Chennai Bench which is pending as on date. Thus, the reliance placed by the applicants on the decision in R. Chandrasekaran also does not stand to benefit of any kind to the applicants herein.*

**15.3** *It is notice that during the pendency of M V Mohnan Nair Case before Hon'ble Apex Court & before the judgment passed in the said case, different orders /*

*directions were issued by various Benches of this Tribunal and Hon'ble High Courts and same has been relied upon by the counsel for applicant including* ***(i)*** *decision of the Principal Bench of the CAT in OA No.2806 of 2016 decided on 26.2.2020* ***(ii)*** *Common Order passed in Misc. Petition No.6500/2019 in Union of India & Ors. v/s B.R.K. Lyer and Ors. and other connected petitions by Hon'ble High Court of Madhya Pradesh: Jabalpur Bench which was reserved on 19.02.2020 and pronounced on 30.04.2020* ***(iii)*** *Order dated 04.03.2020 in OA No.162/2018 in the case of Mune Gowda v/s. UOI & Ors. (iv) Order dated 20.12.2017 passed by Hon'ble High Court of Delhi in W. P (C) No.9357/2016 in the case of Hariram and Anr as also otherorders with respect to implementation of the condition No.8.1 of Annexure –I to MACP and consequent withdrawal of the 3rd MACP granted to the Superintendent working under CBEC. Therefore, the Department of Revenue, CBEC again vide letter dated 28.10.2020 has sought advice of the DoPT regarding counting of Non- functional up-gradation (NFU) granted to the Superintendents as one financial up-gradation under MACP Scheme clarification instruction.*

**15.4** *In response to the said queries, by taking into consideration the provision of para 8.1 of Annexure A/1 of MACP Scheme dated 19th May, 2009 including the various clarifications issued on the subject and the judgment passed by Hon'ble Apex Court in the case of Mohanan Nair as also different orders passed by various Benches of this Tribunal and various High Courts (referred above in this para), the DoPT, the competent authority in this case, has issued another clarification/ advise dated 24.12.2020, wherein it has reiterated its earlier position that NFG/NFU granted in GP 5400/- in PB -2 needs to be offset against one Financial Up gradation as per MACP Scheme. The grant of Grade Pay of Rs.5400/- in PB-2, is very muchin the ladder of hierarchy of Grade Pay. After 6th CPC and introduction of MACP Scheme, MACP is granted not in the hierarchy of the promotional posts but in the hierarchy of standard Grade Pay. Any deviation from these guidelines would have repercussions in all other* *cadres of the Central Government and further stated that the earlier advice of DoPT dated 02.05.2016 and I.D Note dated 02.6.2016 still holds good and reiterated.*

*Further, it is clarified by the DoPT that direction issued in orders /judgments of various Tribunal and Hon'ble High Courts which are referred hereinabove are not consistent with the policy of the MACP Scheme, as also the said directions are contrary to the law laid down in the case of M V Mohanan Nair and therefore the same requires to be challenged in higher courts.*

*The respondents CBEC categorically contended in their reply/written submissions that on receipt of aforesaid advice / clarification of DoPT, they have filed their review applications before the concerned Tribunals/Courts against the orders/judgments referred hereinabove. In other words, the respondents have filed review applications against the orders / judgments referred and relied by the applicants as the said orders / judgments are not in consonance with the mandate of MACPS and the law laid down by Hon'ble Apex Court in the case of M V Mohanan Nair (Supra). Therefore, the judgments relied upon by the counsel for the applicants are not applicable. At the cost of repetition, we reiterate that most of the orders/judgments relied upon by the applicant has followed the order passed in S. Balakrishnan (supra) which was based on judgment passed in Rajpal case and as noted hereinabove in the case of Union of India v/s M V Mohanan Nair (supra) it has been held that the "Rajpal case" ought not to have been quoted as precedent. Therefore, also the said orders/judgments are of no help to the applicant.*

**15.5** *At this stage it is appropriate to mention that it is settled principles of law that the court should avoid giving a declaration granting a particular scale of pay and compelling the Government to implement the same. 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 State of Haryana Vs. 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. It is also settled law that 'when the Government has accepted the recommendation of the Pay Commission and has also implemented those, any interference by the Court would have serious impact on the public exchequer'.*

*In this regard, we may also profitably refer to the observation ofthe Hon'ble Apex Court in para 33 and 34 of M.V.Mohanan Nair (supra) which reads as under:*

***"33. Observing that it is the functioning that which normally acts under the recommendations of the Pay Commission whichis proper authority to decide upon the issue, 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 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 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 leastone Judicial Member."**

***34. 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:-***

**"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. "**

**16.** *In the present case, it can be seen that as per the stipulation in Clause – 9 of the MACPS dated 19.05.2009 the DOPT (Establishment – D) is the competent authority with respect to interpretation / clarification of doubt as to the scope and meaning of the provisions of MACP Scheme and in the present case, undisputedly the said competent authority categorically instructed the CBEC to treat the NFG / NFU granted to the Superintendent as one separate financial up-gradation under MACP. The unambiguous stipulation under the MACP Scheme and consistent clarifications issued by DoPT as noted hereinabove makes it clear beyond doubt that the financial up-gradation to the applicants under NFG / NFU is to be counted as one MACP up-gradation.*

**17.** *Since, applicants herein were promoted from the post of Inspector to the post of Superintendent in PB – 2 GP 4800 and thereafter on completion of 4 year of regular service as Superintendent they were granted financial up- gradation as NFG in PB – 2 GP 5400 w.e.f. 01.01.2006 / 24.09.2006 vide order dated 16.09.2009, subsequently on completion of 24 years of service the applicants were granted 2nd financial up-gradation under ACP w.e.f. June, 2008 in PB – 3 Rs. 15600 – 39100 GP 5400 and thereafter they were also granted another financial up-gradation of 3rd MACP in GP 6600/- by ignoring grant of Financial Up-gradation as Non- Functional Grade PB –2 GP 5400/-, in view of this* *factual matrix, in our considered view, the respondents have correctly treated the NFG / NFU in PB – 2 Rs. 5400 granted to the applicant as separate Grade Pay in terms of mandate of para 8.1 of Annexure A/1 of MACPS and rightly decided to withdraw the erroneous grant of further financial up-gradation by way of 3rd MACP in PB – 3 GP Rs. 6600/- for which applicants were not at all entitled. Therefore, the submissions of the applicants that the NFG granted to them cannot be treated as up-gradation in MACP is not tenable and same submission is found to be contrary to the mandate of MACP itself. The impugned decision dated 20.06.2016, is found to be issued in consonance with the terms of para 8.1 of Annexure A/1 to MACPS and for the said reason it cannot be said that the impugned order is suffering from any infirmities. Needless to reiterate that the two questions posed above are answered accordingly.*

**18.** *In view of what has been observed and decided by the Hon'ble Apex Court in* ***Union of India vs. M. V. Mohanan Nair (supra) more particularly it has been held that "there is nothing to show that the scheme (i.e. MACP) is arbitrary or unjust warranting interference as also when the government has accepted the recommendation of pay commission and has also implemented those, any interference by the court would have a serious impact on the public exchequer",*** *in the present case as noted hereinabove since the applicants were not entitled for grant of 3rd MACP of Grade Pay Rs.6600/- in PB-3 and the respondents have correctly decided to withdraw the said benefit which was granted erroneously to the applicants, and accordingly the excess payments have already been recovered by the respondent before the retirement of some of the applicants and therefore we are not inclined to interfere with the said recovery. The separate OAs filed by some of the applicants against the decision of respondent to recover the excess payment paid to such applicants towards 3rd MACP, the said OAs are being disposed of by separate order.*

***19.*** *At this stage, it is apt to mention that the present applicants and some other similarly placed officials of the same department had filed identical OAs before this*

*Tribunal in the year 2016/17, out of which in OA 581/2016 (i.e. the present one), this Tribunal vide its interim order dated 12.08.2016 ordered that in the interregnum, any action pursuant to the clarification bearing no.A-23011/25/2015-Ad.IIA dated 20.06.2016 (Annexure A/3) shall be subject to the final outcome of the OA. It is noticed that all the said OAs including the present OA were dismissed by this Tribunal vide its common order dated 22.09.2017 and 28.07.2017.*

*In the meantime, most of the applicants had retired on superannuation and immediately after dismissal of the said OAs, the respondents initiated the recovery by taking action pursuant to impugned order dated 20.06.2016. Accordingly, the respondents had re-fixed the pay of the applicants after withdrawal of the benefit of 3$^{rd}$ financial up-gradation under MACPS granted to them wrongly. For the said revision of pay the respondents had issued notice to the applicants/concerned officers against which they filed their reply. However, the CBEC has not acceded to their appeal/reply mainly on the ground that applicants were not entitled for the 3$^{rd}$ MACP and due to pendency of litigation in the Court they could not initiate action for re-fixation of their pay and consequent recovery before their retirement. Aggrieved by it some of the applicants have filed separate OAs for waiver ofrecovery before this Tribunal such as OA No.219/2019 and other connected OAs. It is mentioned here that in the said OAs separate order has been passed in light above discussions."*

**10a.** From above quoted order passed by this Tribunal, it can be seen that the competent authority under the MACP Scheme had categorically instructed the CBEC to treat the NG/NFU granted to the Superintendent as one separate financial up gradation under the MACP Scheme and subsequent clarification issued by DoPT makes it clear beyond doubt that the financial up gradation granted to the applicants under NFG/NFU is to be counted as '**One MACP up gradation'.** Further it was held that in light of recent judgment passed by Hon'ble Apex Court in the case of M. V. Mohanan Nair that there is nothing to show that the scheme (i.e. MACP) is arbitrary or unjust warranting interference. Moreover, the Government has accepted the recommendations of Pay Commission and has also implemented the same; any interference by the Court would have serious impact in the public exchequer.

**11.** In the present case, as noted herein above the grievance raised by the applicants and prayers sought are identical in nature in the aforesaid decision passed in OA No. 581/2016 dated 25.01.2021. In our considered view, then decision rendered in the OA No.581/2016 (supra) is squarely applicable to the present case and it answers the queries raised in para 4 above. Further, reliance placed by the counsel for the applicants on various judgments and orders passed by High Courts and different Benches of this Tribunal have been passed during the pendency of M.V.Mohanan Nair's case before Hon'ble Apex Court, the same is not helpful to the applicant in view of the *dictum* laid down by Hon'ble Apex Court in M. V. Mohanan Nair's case (supra).

Further, we reiterate that most of the orders/judgments relied upon by the applicants herein have followed the order passed in S. Balakrishnan (Supra) which was based on judgment passed in Rajpal case. At this stage, it is apt to mention that the Hon'ble Apex Court in the case of U.O.I vs M. V. Mohanan Nair (supra) held that ***"Rajpal Case" ought not to have been quoted as precedent.*** Therefore, the judgments and orders relied upon by the counsel for the applicants herein are of no help to them.

**12.** In our considered view, the respondents have correctly treated the NFG/NFU granted to the applicants in PB-2, Rs.5400 & PB-3, Rs.5400 as separate Grade Pay in terms of mandate of Para 8.1 of Annexure – I of MACP Scheme and rightly decided to withdraw the letter dated 16.05.2015 in the case of Shri R. Chandrasekaran vide decision dated 20.06.2016. Therefore, the submission of the learned counsel for applicants that the NFG granted to them cannot be set off as MACP is not tenable and same submission is found to be contrary to the mandate of MACP Scheme itself, as also the claim of the applicants that they have only prayed for grant of benefit under MACP Scheme in the hierarchy grade pay and have not prayed for benefit in promotional hierarchy, in our considered view the said claim is also not tenable as the next hierarchy of grade for upgradation is Rs.5400 in PB-3 which is in Level 10 whereas the grade pay of Rs.6600/- as demanded by the applicants is in PB-3 at Level 11 of the pay matrix.

**13.** In view of the aforesaid discussions and in light of the *dictum* laid down by Hon'ble Apex Court in the case of M V Mohanan Nair (supra), as also the order passed by this Tribunal in identical matters i.e. OA No.581/2016 and OA No.511/2020 is squarely applicable to the case on hand. In the result, we do not find any legal infirmities in the impugned decisions passed in all the identical OAs including in the present OA. The OA stands dismissed accordingly. MA, if any pending, the same stands disposed of accordingly. No orders as to costs.

**(A K Dubey)**
**Member(A)**

**(Jayesh V Bhairavia)**
**Member(J)**

abp/pa/nk/skv