

INDIAN RAILWAYS TECHNICAL SUPERVISORS ASSOCIATION

(Estd. 1965, Regd. No.1329, Website <http://www.irtsa.net>)

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No:IRTSA/ CHQ/ MOR /2019-7

Date:05.12.2019

1. Secretary Finance (Expenditure), North Block, New Delhi - 110001
2. Secretary Department of Personnel & Training, North Block, New Delhi - 110 001
3. Member Staff, Room No.214, Railway Board, New Delhi - 110001

Respected Sir,

Sub: Benefits of MACPS w.e.f. 01.01.2006.

- Ref:**
1. Recommendations of Sixth Central Pay Commission para 6.1.15, 6.5.2 & 6.5.4
 2. Ministry of Finance Resolution No.1/1/2008-I C, dated 29.8.2008
 3. OM No. PC-V/2009/ACP/2 (RBE No.101 /2009) dated 10.06.2009 – Regarding Recommendations of Sixth CPC – Modified Assured Career Progression Scheme (MACPS) for Railway Employees,
 4. Ministry of Railways Notification RBE No. 103/2008 dated 04.09.2008
 5. Railway Service (Revised Pay) Rules, 2008, No. PC-VI/2008//RSRP/1 (RBE No:108/2008) dated 11.09.2008
 6. Judgement of Supreme Court in Civil Appeal No.3744 of 2016 Dated 8-12-2017 (Copy attached).
 7. Judgement of High Court of Bombay writ petition No. 1763 of 2013 (Copy attached).

1. We seek your kind intervention to consider and revise the date of implementation of MACPS w.e.f 1.1.2006 (instead of 1-9-2008), since Hon'ble Supreme Court of India had held that MACPS is a part of pay structure recommended by 6th CPC and not to be considered as allowance which were implemented from 1.9.2008.

2. 6th CPC in Para 6.1.15 (Annexure-I) of its report, had recommended Modified Assured Career Progression Scheme (MACPS). As per its recommendations, financial upgradation was to be available in the next higher Grade Pay whenever an employee completed 12 years continuous service in the same grade with two financial upgradations were to be given in the career. The Government had accepted the same with a modification to grant three financial upgradations under the MACPS at intervals of 10, 20 and 30 years of continuous regular service. This Scheme was in supersession of previous ACP Scheme and clarifications were issued there under.

3. **Sixth CPC Recommendations on Date of implementation:**

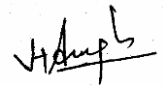
- a) **Reg. Pay Structure:** 6th CPC in para 6.5.2 & 6.5.4 (Annexure-II) of its report had recommended for implementation of revised scheme of Pay Bands and Grade Pay as on 1/1/2006 retrospectively
- b) **Reg. Allowances:** 6th CPC had recommended for implementation of revised allowances to take effect prospectively.
- c) **Reg. MACPS:** 6th CPC had recommended for implementation of MACPS retrospectively from 1-1-2006, as clear from the relevant Para reproduce below:

6.5.2. The Commission has devised the revised scheme of Pay Bands and Grade Pay on the basis of price index as on 1/1/2006. Consequently, the revised structure of pay bands and grade pay being recommended in this Report would need to be implemented from 1/1/2006. The Government will have to pay arrears of salary on account of fixation of pay in the revised pay bands and grade pay retrospectively with effect from 1/1/2006.

4. Ministry of Finance vide Gazette of India, Extraordinary Notification of Resolution No.1/1/2008-I C, dated 29.8.2008 had implemented revised pay w.e.f.1.1.2006. But it implemented MACPS and all allowances except DA w.e.f.1.9.2008.Relevant rules of finance ministry notification is attached as Annexure-III
5. Ministry of Railways also implemented revised pay w.e.f.1.1.2006 and all allowances except DA w.e.f.1.9.2008. Relevant part of RBE No. 103/2008 dated 04.09.2008 is attached as Annexure-IV
6. Railway Board implemented the revised rate of NPA effective from the date an employee drawing pay in the revised scale applicable to him in accordance with the provisions of the Railway Services (Revised Pay) Rules, 2008, i.e. w.e.f. 1.1.2006, vide its letter No. PC-V/2008/A/O/1(NPA) (RBE No. 122/2008) dated 22.9.2008. Relevant part of RSRP is attached as Annexure-V
7. It is very much evident that 6th CPC recommended MACPS as part of pay structure. Subsequent resolution issued by Finance Ministry, (relevant paras of resolution given in earlier paras of this memorandum) implemented revised pay w.e.f. 1.1.2006. All allowances except DA were implemented w.e.f.1.9.2008.
8. MACPS is a part of pay structure. But MACP order have been implemented w.e.f.1.9.2008, which is against the 6th CPC recommendations and Finance Ministry's resolution.
9. Hon'ble Supreme Court of India in Civil Appeal No.3744 of 2016 decided on 8-12-2017(copy attached as Annexure-VI) had upheldthe orders of the Armed Forces Tribunal (AFT) vide its order dated 21.05.2014 wherein it was held that the benefit of ACP granted to an employee is part of the pay structure which not only affects his pay but also his pension and, therefore, held that the ACP is not an allowance but a part of pay and will apply from 01.01.2006. The Court had further ordered and held that there can be no dispute that grant of ACP is part of the pay structure.
10. Hon'bleHigh Court of Bombayin its judgement on writ petition No. 1763 of 2013(copy attached as Annexure-VII)reitreated the judgement of Hon'ble Supreme Court of India and ordered to extend the benefit of MACPS with effect from 1st January, 2006 together with all consequential benefits
11. **It is, therefore, requested that MACPS may please be implemented from 1.1.2006 since MACPS is part of pay structure – as recommended by 6th CPC and as held by the Apex Court.**

Thanking you

Yours' faithfully,



**(Harchandan Singh),
General Secretary, IRTSA**

Encl: 6 Annexure

- 2 Extracts of recommendations of 6th CPC
 - Reg Date of effect of MACPS as being part of Pay structure
- 3 Extracts of decisions of Gov.RegMACPS.
- 1 Copy of judgment of Supreme Court
 - on Date of effect of MACPS as part of Pay structure
- 1 Copy of judgment of High Court of Bombay
 - on Date of effect of MACPS as part of Pay structure

Copy to

Secretary Establishment, Railway Board, Room No 227, Railway Board, Rail Bhavan, New Delhi – 110001

6th CPC recommendations on MACPS

6.1.15. The Commission, therefore, recommends that the existing scheme of Assured Career Progression may, in future, be continued with two financial upgradations being allowed as at present with the following modifications:-

- i) The scheme will also be available to all posts belonging to Group A - whether isolated or not. Organised Group A services will, however, not be covered under the scheme.
- ii) Benefit of pay fixation available at the time of normal promotion shall be allowed at the time of financial upgradations under the scheme. Thus, an increase of 2.5% of pay and grade pay shall be available as financial upgradation under the scheme.
- iii) The grade pay shall change at the time of financial upgradation under this scheme. The grade pay given at the time of financial upgradation under ACPS will be the immediate next higher grade pay in the hierarchy of revised pay bands and grade pay being recommended. Thus, grade pay at the time of financial upgradation under ACPS 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/ organization will be given only at the time of regular promotion.
- iv) Financial upgradation under the scheme will be available whenever a person has spent 12 years continuously in the same grade. However, not more than two financial upgradations shall be given in the entire career as was provided in the extant scheme.

The scheme with aforesaid modifications shall be called modified ACPS and will ensure suitable progression uniformly to all the employees in Central Government.

6th CPC recommendations on Date of effect

6.5.2. The Commission has devised the revised scheme of pay bands and grade pay on the basis of price index as on 1/1/2006. Consequently, the revised structure of pay bands and grade pay being recommended in this Report would need to be implemented from 1/1/2006. The Government will have to pay arrears of salary on account of fixation of pay in the revised pay bands and grade pay retrospectively with effect from 1/1/2006.

6.5.4. The Commission is of the view that prospective revision of various allowances is justified as their retrospective revision will give unintended benefits and may also, in some instances, cause loss to the employees as in the case of City Compensatory Allowance. Accordingly, the Commission's recommendations relating to allowances shall take effect prospectively. All recommendations relating to other facilities, benefits and conditions of service shall also take effect prospectively.

Ministry of Finance resolution

Gazette of India, Extraordinary, Ministry of Finance resolution No.1/1/2008-I C, dated 29.8.2008 has implemented revised pay w.e.f.1.1.2006 and all allowances except DA w.e.f.1.9.2008.

rule (iv)of rule 1. With regard to fixation pay in the revised pay bands, the basic pay drawn as on 1.1.2006 on the existing 5th CPC pay scales will be multiplied by a factor of 1.86 and then rounded off to next multiple of 10. This will be the pay in the revised running pay band. Grade Pay, as approved by Government, corresponding to the pre-revised pay scale, will be then added to the pay in the revised pay band. The total of pay in pay band and grade pay will be the revised basic pay as on 1.1.2006.

rule (vii)of rule 1. Three upgradation will be granted under Assured Career Progression (ACP) scheme at 10, 20 and 30 years as per Modified ACP scheme recommended by the Commission. ACP scheme will also be applicable to Group 'A' employees.

rule 3. The revised allowances, other than dearness allowance, will be effective from 1st day of September 2008.

Annexure-IV

Ministry of Railways Notification RBE No. 103/2008 dated 04.09.2008

Sub rule (2) of rule 1 - They shall be deemed to have come into force on the 1st January 2006.

Sub rule (1) of rule 7 – The initial pay of Railway servant who elects, or deemed to have elected under sub rule (3) of rule 6 to be governed by the revised pay structure on or from 1st January 2006, shall, unless in case the President by special order otherwise directs, be fixed separately in respect of substantive pay in the permanent post on which he holds a leave or would have held a leave if it had not been suspended, and in respect of pay in the officiating post held by him, in the following manner namely:-

(A) In the case of all employees

(i) the pay in the pay band/Pay scale will be determined by multiplying the existing basic pay as on 1.1.2006 by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10.

Annexure-V

Railway Service (Revised Pay) Rules, 2008, No. PC-VI/2008/II/RSRP/1 (RBE No:108/2008) dated 11.09.2008

Rule 4. The revised rates of all allowances, such as House Rent Allowance, Transport Allowance, Children Education Allowance, Special Compensatory Allowance, Special Duty Allowance, Island Special Duty Allowance, Hard Duty Allowance etc will be paid prospectively w.e.f.1.9.2008. Accordingly no arrears will be paid in respect of these allowances. However, Dearness Allowances and non-practicing allowance for medical doctors at rates notified separately, will be payable w.e.f.1.1.2006 or from the date of option.

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL DIARY NO. 3744 OF 2016

Union of India and Ors. Appellant(s)

Vs.

Balbir Singh Turn &Anr.Respondent(s)

J U D G M E N T

Deepak Gupta, J.

1. Applications for condonation of delay in filing and refiling the appeals are allowed.
2. This bunch of appeals is being disposed of by a common judgment since similar questions of law are involved.
3. The 6th Central Pay Commission was set up by the Government of India to make recommendations in matters relating to emoluments, allowances and conditions of service amongst other things. The Pay Commission also made recommendation with regard to armed forces personnel. On 30th August, 2008, the Central Government resolved by a resolution of that date to accept the recommendation of the 6th Central Pay Commission ('CPC' for short) with regard to the Personnel Below Officer Rank (PBOR) subject to certain modifications. Clause (i) of the Resolution reads as follows :-

“(i) Implementation of the revised pay structure of pay bands and grade pay, as well as pension, with effect from 01.01.2006 and revised rates of allowances (except Dearness Allowance/relief) with effect from 01.09.2008;”

Clause 9 of the Resolution reads as follows :-

“(ix) Grant of 3 ACP up-gradation after 8, 16 and 24 years of service to PBORs;”

4. Under the recommendations made by the 5th CPC there was a provision for Assured Career Progression (ACP). Vide this scheme, if an employee was not promoted he was entitled to get the next higher scale of pay after completion of 12/24 years of service. The 6th CPC recommended the grant of benefit of ACP after 10 and 20 years of service. The Union of India, however decided to grant 3 ACP upgradations, after 8, 16 and 24 years of service to PBORs, as per Clause (ix) extracted above. However, it would be pertinent to mention that the 6th CPC did away with the concept of pay scales and reduced the large number of pay scales into 4 pay bands and within the pay bands there was a separate grade pay attached to a post.
5. For the purpose of this judgment we are dealing with the facts of Civil Appeal Diary No. 3744 of 2016. It would be pertinent to mention that all the petitioners before the Armed Forces Tribunal ('AFT' for short) who are respondents before us are persons below officer rank. The respondents in this case retired after 01.01.2006 but prior to 31.08.2008. They claim that the benefit of the Modified Assured Career Progression ('MACP' for short) was denied to them on the ground that the MACP was made applicable only with effect from 01.09.2008. The respondents approached the AFT praying that they are entitled to the benefit of MACP w.e.f. 01.01.2006, i.e., the date from which the recommendation of the 6th CPC with regard to pay and benefits were made applicable. The stand of the Union of India was that the MACP was applicable only w.e.f. 01.09.2008 and, therefore, the respondents who had retired prior to the said date were not entitled to the benefit of the MACP. The AFT vide the impugned order dated 21.05.2014 held that the benefit of ACP granted to an employee is part of the pay structure which not only affects his pay but also his pension and, therefore, held that the ACP is not an allowance but a part of pay and, therefore, in terms of Clause (i) of the Government Resolution the MACP was payable w.e.f. 01.01.2006.
6. The question that arises for decision is whether the benefit of MACP is applicable from 01.01.2006 or from 01.09.2008.
7. The answer to this question will lie in the interpretation given to the Government Resolution, relevant portion of which has been quoted hereinabove. A bare perusal of Clause(i) of the

Resolution clearly indicates that the Central Government decided to implement the revised pay structure of pay bands and grade pay, as well as pension with effect from 01.01.2006. The second part of the Clause lays down that all allowances except the Dearness Allowance/relief will be effective from 01.09.2008. The AFT held, and in our opinion rightly so, that the benefit of MACP is part of the pay structure and will affect the grade pay of the employees and, therefore, it cannot be said that it is a part of allowances. The benefit of MACP if given to the respondents would affect their pension also.

8. We may also point out that along with this Resolution there is Annexure-I. Part-A of Annexure-I deals with the pay structure, grade pay, pay bands etc., and Item 10 reads as follows :-

10	<p>Assured Career Progression Scheme for PBORs.</p> <p>The Commission recommends that the time bound promotion scheme in case of PBORs shall allow two financial upgradations on completion of 10 and 20 years of service as at present. The financial upgradations under the scheme shall allow benefit of pay fixation equal to one increment along with the higher grade pay. As regards the other suggestions relating to residency period for promotion of PBORs Ministry of Defence may set up an Inter-Services Committee to consider the matter after the revised scheme of running bands is implemented (Para 2.3.34</p>	<p>Three ACP upgradation after 8, 16 and 24 years of service has been approved. The upgradation will take place only in the hierarchy of Grade Pays, which need not necessarily be the hierarchy in that particular cadre.</p>
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Part-B of Annexure-I deals with allowances, concessions & benefits and Conditions of Service of Defence Forces Personnel. It is apparent that the Government itself by placing MACP in Part-A of Annexure-I was considering it to be the part of the pay structure.

9. The MACP Scheme was initially notified vide Special Army Instructions dated 11.10.2008. The Scheme was called the Modified Assured Career Progression Scheme for Personnel Below Officer Rank in the Indian Army. After the Resolution was passed by the Central Government on 30.08.2008 Special Army Instructions were issued on 11.10.2008 dealing with revision of pay structure. As far as ACP is concerned Para 15 of the said letter reads as follows:-

“15. Assured Career Progression. In pursuance with the Government Resolution of Assured Career Progression (ACP), a directly recruited PBOR as a Sepoy, Havildar or JCO will be entitled to minimum three financial upgradations after 8, 16 and 24 years of service. At the time of each financial upgradation under ACP, the PBOR would get an additional increment and next higher grade pay in hierarchy.

xx xx xx”

Thereafter, another letter was issued by the Adjutant General Branch on 03.08.2009. Relevant portion of which reads as follows:-

“.....The new ACP (3 ACP at 8, 16 and 24 years of service) should be applicable w.e.f. 1 Jan 2006, and the old provns (operative w.e.f. the Vth Pay Commission) would be applicable till 31 Dec. 05. Regular service for the purpose of ACP shall commence from the date of joining of a post in direct entry grade.

xx xx xx”

Finally, on 30.05.2011 another letter was issued by the Ministry of Defence, relevant portion of which reads as follows:-

“5. The Scheme would be operational w.e.f. 1st Sep. 2008. In other words, financial up-gradations as per the provisions of the, earlier ACP scheme (of August 2003) would be granted till 31.08.2008.”

Therefore, even as per the understanding of the Army and other authorities up till the issuance of the letter dated 30.05.2011 the benefit of MACP was available from 01.01.2006.

10. As already held by us above, there can be no dispute that grant of ACP is part of the pay structure. It affects the pay of the employee and he gets a higher grade pay even though it may be in the same pay band. It has been strenuously urged by Col. R. Balasubramanian, learned counsel for the UOI that the Government took the decision to make the Scheme applicable from 01.09.2008 because many employees would have lost out in case the MACP was made applicable from 01.01.2006 and they would have had to refund the excess amount, if any, paid to them. His argument is that under the old Scheme if somebody got the benefit of the ACP he was put in the higher scale of pay. After merger of pay scales into pay bands an employee is only entitled to higher grade pay which may be lower than the next pay band. Therefore, there may be many employees who may suffer.

11. We are only concerned with the interpretation of the Resolution of the Government which clearly states that the recommendations of 6th CPC as modified and accepted by the Central Government in so far as they relate to pay structure, pay scales, grade pay etc. will apply from 01.01.2006. There may be some gainers and some losers but the intention of the Government was clear that this Scheme which is part of the pay structure would apply from 01.01.2006. We may also point out that the Resolution dated 30.08.2008 whereby the recommendation of the Pay Commission has been accepted with modifications and recommendations with regard to pay structure, pay scales, grade pay etc. have been made applicable from 01.01.2006. This is a decision of the Cabinet. This decision could not have been modified by issuing executive instruction. The letter dated 30.05.2011 flies in the face of the Cabinet decision reflected in the Resolution dated 30.08.2008. Thus, administrative instruction dated 30.05.2011 is totally ultra vires the Resolution of the Government.

12. Col. R. Balasubramanian, learned counsel for the UOI relied upon the following three judgments viz. ***P.K. Gopinathan Nair & Ors. v. Union of India and Ors.***1, passed by the High Court of Kerala on 22.03.2017, ***Delhi Urban Shelter Improvement Board v. Shashi Malik & Ors.***2, passed by the High Court of Delhi on 01.09.2016, ***K.K. Anandan & Ors. v. The Principal Accountant General Kerala (Audit) & Ors***3 passed by the Central Administrative Tribunal, Ernakulam Bench, Kerala on 08.02.2013. In our view, none of these judgments is applicable because the issue whether the MACP is part of the pay structure or allowances were not considered in any of these cases.

13. In this view of the matter we find no merit in the appeals, which are accordingly disposed of. All pending applications are also disposed of.

.....J.
(Madan B. Lokur)
.....J.
(Deepak Gupta)

New Delhi
December 08, 2017

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1763 OF 2013

M. P. Joseph ... Petitioner
Versus
Union of India and others ... Respondents

.....
Mr. M. P. Joseph - Petitioner-in-person.
Mr. R.R. Shettya/wMr.Anand Singh for the Respondent Nos. 1
and 2.
Ms.LataPatnea/wMr.Vinod Joshi for Respondent No.4.

.....
CORAM : A. S. OKA AND M. S. SONAK, JJ.

RESERVED ON : 08th OCTOBER, 2018
PRONOUNCED ON : 15th OCTOBER, 2018

JUDGMENT : (Per M. S. Sonak, J.)

1. Heard Shri M. P. Joseph – Petitioner in person and Shri R.R. Shettya/wShriAnand Singh for the Respondent Nos. 1 and 2, Ms.LataPatnea/wMr.Vinod Joshi for Respondent No.4.
2. Rule. With the consent and at the request of the learned Counsel for the respondents the petition is taken up for final disposal forthwith.
3. The challenge in this petition to the judgment and order dated 16th April, 2013 made by the Central Administrative Tribunal (for short 'the CAT'), dismissing the Original Application No. 145 of 2013 instituted by the petitioner seeking benefit of Modified Assured Career Progression (MACP) with effect from 1st January, 2006 along with all other consequential benefits.
4. Mr. M. P. Joseph-the petitioner in person submits that the issue raised in the present petition is answered in favour of the petitioner by the Hon'ble Apex Court in the case of ***Union of India and others Vs. Balbir Singh Turn and another (2018) 11 SCC 99*** and therefore the CAT's impugned judgment and order may be set aside and the relief prayed for by him in his Original Application No. 145 of 2013 be granted.
5. The learned Counsel for the respondents submit that the benefit under the MACP cannot be regarded as any part of the pay structure extended to the civilian employees and therefore the CAT was justified in denying relief to the petitioner. The learned Counsel submit that the recommendations of the pay commissions are not *per-se* binding upon the Government and the implementation, including the date from which such recommendations are to be implemented are matters in the discretion of the Government. Since, in the present case, implementation in respect of allowances was directed with effect from 1st September, 2008, the petitioner was not at all justified in seeking implementation with effect from 1st January, 2006. For these reasons the learned Counsel for the respondents submit that this petition may be dismissed.
6. The rival contentions now fall for our determination.
7. There is no dispute in the present case that the petitioner is eligible for receipt of benefits under the MACP. The only dispute is whether the petitioner is required to be granted the benefits under the MACP with effect from 1st January, 2006 as claimed by him in his Original Application No. 145 of 2013 or whether such benefits are due and payable to the petitioner with effect from 1st September, 2008 as contended by and on behalf of the respondents.
8. The sixth pay commission made recommendations with regard to Armed Forces Personnel. By a resolution dated 30th August, 2008, the Central Government resolved to accept such recommendations with regard to Personnel Below Officer Rank (PBOR) subject to certain modifications. Clause (i) of this resolution as relevant and the same reads as follows :-

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

9. As noted earlier, the only issue which arises in the present petition is whether the benefit under MACP is to be regarded as a part of the pay structure of pay bands and grade pay or whether such benefit is to be regarded as “allowances (except dearness allowance/relief)”. If the benefit under MACP is to be regarded as a part of the pay structure of pay bands and grade pay, then obviously the petitioner is right in contending that such benefit will have to be extended to him with effect from 1st January, 2006 in terms of Clause (i) of the aforesaid resolution dated 30th August, 2008. However, if, as held by the CAT in the present case, the benefit of MACP is to be regarded as “allowances (except dearness allowance/relief)”, then the respondents would be right in their contention that such benefit is payable only with effect from 1st September, 2008.

10. The aforesaid was the precise issue which arose for consideration in case of **Balbir Singh Turn (supra)**. The Apex Court upon consideration of the Central Government Resolution dated 30th August, 2008 along with Part-A of Annexure-I thereto has clearly held that the benefit under MACP is a part of the pay structure and therefore such benefit was payable from 1st January, 2006 and not from 1st September, 2008.

11. The reasoning is contained in paragraphs 6, 7 and 8 of the Apex Court ruling, which reads as follows :-

“6. The answer to this question will lie in the interpretation given to the Government Resolution, relevant portion of which has been quoted hereinabove. A bare perusal of Clause (i) of the Resolution clearly indicates that the Central Government decided to implement the revised pay structure of pay bands and grade pay, as well as pension with effect from 1-1-2006. The second part of the clause lays down that all allowances except the dearness allowance/relief will be effective from 1-9-2008. **The AFT held, and in our opinion rightly so, that the benefit of MACP is part of the pay structure and will affect the grade pay of the employees and, therefore, it cannot be said that it is a part of allowances. The benefit of MACP if given to the respondents would affect their pension also.**

7. We may also point out that along with this Resolution there is Annexure I. Part A of Annexure I deals with the pay structure, grade pay, pay bands, etc., and Item 10 reads as follows:

10	Assured Career Progression Scheme for PBORs. The Commission recommends that the time bound promotion scheme in case of PBORs shall allow two financial upgradations on completion of 10 and 20 years of service as at present. The financial upgradations under the scheme shall allow benefit of pay fixation equal to one increment along with the higher grade pay. As regards the other suggestions relating to residency period for promotion of PBORs Ministry of Defence may set up an Inter-Services Committee to consider the matter after the revised scheme of running bands is implemented (Para 2.3.34	Three ACP upgradation after 8, 16 and 24 years of service has been approved. The upgradation will take place only in the hierarchy of Grade Pays, which need not necessarily be the hierarchy in that particular cadre.
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Part B of Annexure I deals with allowances, concessions and benefits and conditions of service of defence forces personnel. It is apparent that the **Government itself by placing MACP in Part A of Annexure I was considering it to be the part of the pay structure.**

8. The MACP Scheme was initially notified vide Special Army Instructions dated 11-10-2008. The Scheme was called the Modified Assured Career Progression Scheme for Personnel Below Officer Rank in the Indian Army. After the Resolution was passed by the Central Government on 30-8-2008 Special Army Instructions were issued on 11-10-2008 dealing with revision of pay structure. As far as ACP is concerned Para 15 of the said letter reads as follows :

“15. Assured Career Progression. In pursuance with the Government Resolution of Assured Career Progression (ACP), a directly recruited PBOR as a Sepoy, Havildar or JCO will be entitled to minimum three financial upgradations after 8, 16 and 24 years of

service. At the time of each financial upgradation under ACP, the PBOR would get an additional increment and next higher grade pay in hierarchy.”

Thereafter, another letter was issued by the Adjutant General Branch on 3-8-2009. Relevant portion of which reads as follows :

“... The new ACP (3 ACP at 8, 16, 24 years of service) should be applicable w.e.f. 1-1-2006, and the old provisions (operative w.e.f. the Vth Pay Commission) would be applicable till 31-12-2005. Regular service for the purpose of ACP shall commence from the date of joining of a post in direct entry grade.”

Finally, on 30-5-2011 another letter was issued by the Ministry of Defence, relevant portion of which reads as follows:

“5. The Scheme would be operational w.e.f. 1-9-2008. In other words, financial upgradations as per the provisions of the earlier ACP scheme (of August 2003) would be granted till 31-8-2008.”

Therefore, even as per the understanding of the Army and other authorities up till the issuance of the letter dated 30-5-2011 the benefit of MACP was available from 1-1-2006.”

12. The CAT, when it delivered the impugned judgment and order dated 16th April, 2013 did not have the benefit of the ruling of the Apex Court in **Balbir Singh Turn (supra)** which was decided only on 8th December, 2017. The view taken by the CAT in the impugned judgment and order is now in direct conflict with the view taken by the Apex Court in **Balbir Singh Turn (supra)**. Obviously, therefore, the impugned judgment and order will have to be set aside and the petitioner will have to be held to be entitled to receive the benefits under MACP with effect from 1st January, 2006 together with all consequential benefits.

13. The contentions raised by and on behalf of the respondents cannot be accepted, particularly, in the light of the ruling of the Apex Court in **Balbir Singh Turn (supra)**. The Apex Court, in clear terms and in the precise context of Central Government's resolution dated 30th August, 2008 held that the benefit of MACP is a part of the pay structure and not merely some allowance. The Apex Court has held that the benefit of MACP affects not only the pay but also the pension of an employee and therefore, the same, is not an allowance but part of the pay itself. In terms of Clause (i) of the Central Government's resolution, admittedly, the pay component became payable with effect from 1st January, 2006 unlike the allowance component which became payable from 1st September, 2008.

14. Besides, this is not a case where the petitioner was insisting upon preponement of the date for implementation of the recommendations of the pay commission. The Central Government, vide resolution dated 30th August, 2008 had already accepted the recommendations with regard to POBR, no doubt subject to certain modifications. The relief claimed by the petitioner was entirely consistent with Clause (i) of the resolution dated 30th August, 2008, which in fact required the Government to extend benefits of revised pay structure of pay bands and grade pay, as well as pension with effect from 1st January, 2006.

15. Accordingly, we dispose of this petition with the following order:-

ORDER

(a) The impugned judgment and order dated 16th April, 2013 made by the CAT is hereby set aside.

(b) The petitioner is held entitled to receive the benefit of MACP with effect from 1st January, 2006 together with all consequential benefits.

(c) The respondents are directed to work out the benefits of MACP with effect from 1st January, 2006 together with consequential benefits and to pay the same to the petitioner as expeditiously as possible and in any case within a period of three months from today.

(d) If, such benefits/consequential benefits are not paid to the petitioner within three months from today, then the respondents will be liable to pay interest thereon @ 6% p.a. from the date such payments became due and payable, till the date of actual payment.

(e) Rule is made absolute in the aforesaid terms. There shall however be no order as to costs.