

OFFICE MEMORANDUM

Subject: Order of Hon'ble Supreme Court of India dated 05.03.2020 in SLP (C) No.21803/2014 UoI Vs. M.V. Mohanan Nair & Ors. regarding benefits in promotional hierarchy under MACP Scheme – other issues arising out of Order dated 05.03.2020 – regarding.

The undersigned is directed to refer to this Department's O.M. of even number dated 23.03.2020, which was issued as per Order dated 05.03.2020 of the Hon'ble Supreme Court of India in SLP (C) No.21803/2014, UoI Vs. M.V. Mohanan Nair & Others wherein the Hon'ble Apex Court had held that benefits under the Modified Assured Career Progression Scheme (MACPS) cannot be granted in the promotional hierarchy, and that it would be in the standard hierarchy of Grade Pay/Pay Levels in the Pay Matrix as per the existing MACP guidelines.

2. **The Hon'ble Apex Court, in para 53 of aforementioned Order dated 05.03.2020, further directed that some anomalies, which were brought before the Joint Committee, constituted in Department of Personnel & Training (DoP&T) to examine the MACPS, as indicated in paras 47 to 50 of the Order dated 05.03.2020, be considered as deemed appropriate, and a decision taken in accordance with law.**

3. Accordingly, in compliance of the directions of Hon'ble Apex Court, as indicated in paras 47 to 50 of the Order dated 05.03.2020, the issues arising out of deliberations of the Joint Committee constituted to examine the MACP Scheme, and which were not finally disposed of, have been examined in consultation with Department of Expenditure. It is also to be noted that revised guidelines on MACPS, as per recommendations of the 7th CPC, have been issued *vide* DoP&T's OM No.35034/3/2015-Estt.(D) dated 22.10.2019.

4. The decisions taken on these issues, item-wise, are as follows:

Item No. 1: To provide Grade Pay of the next promotional post under the MACPS (Item No.1 of Minutes of the meeting of Joint Committee held on 15.09.2010).

Item No. 2: Anomaly on introduction of the MACPS - Option may be given to the employees to continue in the old ACP Scheme even after 01.09.2008 (Item No. 8 of Minutes of the meeting of Joint Committee held on 15.09.2010).

Item No. 3: Continuation of the ACP Scheme beyond 31.08.2008 by giving an option to choose either benefits under the ACPS or the MACPS, whichever is more beneficial (Item No.3 of Minutes of the meeting of Joint Committee held on 15.09.2010).

Decision: The issue of grant of benefits in the standard hierarchy of Grade Pays/Pay Levels as per the MACPS guidelines has already been settled by the Hon'ble Apex Court in its Order dated 05.03.2020. Moreover, the matter of replacement of the ACPS with MACPS has also been settled by the Apex Court. As such, as clarified to the staff side *vide* letter dated 4.11.2013, the solution lies in cadre review to address issues relating to stagnation. Therefore, the demands of the Staff Side for grant of benefits in the promotional hierarchy or continuation of the ACPS beyond 31.08.2008 by giving option to either choose between ACPS or MACPS, whichever is more beneficial, cannot be agreed to. Hence, action on these items is treated as closed.



- Item No. 4: Revision of date of introduction of the MACPS (Date of Effect) – Date of effect of the MACPS to be made as 01.01.2006, instead of 01.09.2008 as provided in the scheme (Item No.2 of Minutes of the meeting of Joint Committee held on 27.07.2012).
- Decision:** The issue is presently sub-judice before the Hon'ble Apex Court in SLP Nos. 10811-10813/2018 in the matter of UoI Vs. Ranjit Samuel. Hence, no decision can be taken at this stage. As and when the main and tagged cases are disposed of by the Hon'ble Apex Court, the decision would be communicated to all Ministries/ Departments.
- Item No. 5: Applicability of the MACPS to Group 'D' employees who have been placed in the Grade Pay of Rs.1800/- in PB-1 (Item No.4 of Minutes of the meeting of Joint Committee held on 15.09.2010).
- Decision:** It has been clarified in DoP&T's O.M. No.35034/3/2008-Estt.(D) dated 16.11.2009 that promotions earned or upgradations granted under the ACP Scheme of August, 1999, in the past to four pay scales (S-1, S-2, S-2A and S-3), which now carry the grade pay of Rs.1800/-, shall be ignored for the purpose of the MACPS. Therefore, no further action is required. Hence, the item is treated as closed.
- Item No. 6: Counting of 50% of service rendered by casual labour who attained temporary status for reckoning the 10, 20 and 30 years of service under the MACPS (Item No.5 of Minutes of the meeting of Joint Committee held on 15.09.2010).
- Decision:** As per para 5(v) of the Appendix pertaining to the Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 50% of the service rendered under temporary status is to be counted only for the purpose of retirement benefits after their regularization. The temporary service rendered does not count for any other purposes. Moreover, under the ACPS also, no provision was made for counting of temporary service as 1st and 2nd financial upgradation was being granted to an employee on completion of 12/24 years of regular service. Therefore, the proposal cannot be agreed to. Thus, action on this item is treated as closed.
- Item No. 7: Supervised staff placed in higher Grade Pay than that of the Supervisor – The stepping up of pay of seniors with that of juniors getting higher pay in different cadres and introduction of Grade Pay of Rs.5400 on completion of 4 years of service in the pre-revised pay scale of Rs.6500-10500 (Item No.6 of Minutes of the meeting of Joint Committee held on 15.09.2010).
- Decision:** As per the fundamental principles of the Scheme, financial upgradation granted under the MACPS is purely personal to the employees, and has no relevance to his seniority position. It has already been provided in the Scheme itself that there shall be no additional financial upgradation to the senior employee solely on the ground that his/her junior in the grade has been granted higher pay or grade pay under the Scheme. This has been reiterated in the instructions issued by this Department from time to time, including OM No. 35034/1/97-Estt.(D) dated 04.10.2012 and No. 35034/3/2015-Estt.(D) dated 22.10.2019. Therefore, the proposal cannot be agreed to. Thus, action on the item is treated as closed.
- Item No. 8: Option for pay fixation on grant of financial upgradation under the MACPS between 01.01.2006 and 31.08.2008 (Item No.7 of Minutes of the meeting of Joint Committee held on 15.09.2010).



Decision: In terms of para 9 of the MACPS guidelines (DoP&T's OM dated 19.05.2009), the benefits of the ACP Scheme of August, 1999 would be continued / applicable till 31.08.2008. If the Government employees, who have opted for fixation of their pay in the revised pay-structure w.e.f. 01.01.2006 under the CCS (RP) Rules, 2008, then no arrears of pay would be granted. However, if he has opted for pay fixation from the date of financial upgradation under the ACP with reference to the pre-revised pay scale, then arrears of pay would be granted from the date of his option, i.e., the date of financial upgradation under the ACPS. Para 6 of Annexure-I to DoP&T's OM dated 19.05.2009 already provides for this benefit. Hence, there is no requirement for issue of any further instructions on the said issue. Thus, the item is treated as closed.

Item No. 9: Employees who got one promotion or 1st ACP prior to 01.09.2008 and have completed over two decades of service without benefit of promotion may be granted third upgradation under the MACPS on 1.9.2008 (Para 12 of Minutes of the meeting of Joint Committee held on 27.07.2012).

Decision: As per the MACPS guidelines, there shall be three financial upgradations under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years of service respectively, or after 10 years of continuous service in the same Grade Pay or Pay Level in Pay Matrix, whichever is earlier. Thus, those employees who got either one promotion or 1st ACP before 1.1.2006 and who did not earn any promotion or 2nd ACP during 1.1.2006 to 31.8.2008, are eligible for 2nd MACP on or after 1.9.2008 (i.e. due on completion of 20 Years) and 3rd MACP after 30 years of service or 10 years in the same Grade Pay/Pay Level, as the case may be, if found otherwise eligible. Hence, there is no ground for grant of 3rd MACP straight away on 1.9.2008, without the employee earning 2nd MACP, as per provisions of the MACPS. Therefore, the request of the Staff Side cannot be acceded to and the item is treated as closed.

7. All Ministries/Departments are advised to dispose of all pending representations/references from Staff Associations etc. seeking revision in the instructions/guidelines on the MACPS relating to the above items and also defend the various pending Court Cases or to take immediate suitable action for appealing against such judgments which are contrary to the existing policy, as upheld by the Hon'ble Apex Court in the instant case.



(R. K. Sinha)

Under Secretary to the Govt. of India

To

All Ministries /Departments of the Government of India.

Copy to:-

1. President's Secretariat/Vice President's Secretariat/Prime Minister's Office/Supreme Court/Rajya Sabha Secretariat/Lok Sabha Secretariat/ Cabinet Secretariat/ UPSC/ CVC/ C&AG/Central Administrative Tribunal (Principal Bench), New Delhi.
2. All attached/subordinate offices of the Ministry of Personnel, Public Grievances and Pensions.
3. Secretary, National Commission for Minorities.
4. Secretary, National Commission for Scheduled Castes/Scheduled Tribes.
5. Secretary, Staff Side, National Council (JCM), 13-C, Ferozeshah Road, New Delhi.
6. All Staff Side Members of the National Council (JCM).
7. NIC, DoPT, North Block [for up-loading of this OM on the website of DoPT(ACP)].
8. Hindi Section, DoPT for Hindi Translation.