

INDIAN RAILWAYS TECHNICAL SUPERVISORS ASSOCIATION

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

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No:IRTSA/CHq/Memo RB/MACPS/2017-12

Date: 27-12-2017

**MEMBER STAFF
RAILWAY BOARD
RAIL BHAWAN, NEW DELHI-110001**

Respected Sir,

Sub: Benefits of MACPS w.e.f.1.1.2006, since MACPS is a part of pay structure not as allowances as per Sixth CPC and as per judgment of Supreme Court.

- 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).

1. We seek your kind intervention to urge upon the Government to please reconsider and revise the date of implementation of MACPS w.e.f 1.1.2006 (instead of 1-9-2008), since MACPS has been held by the Hon'ble Supreme Court of India, as 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 the 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. However, not more than two financial upgradations were to be given in the entire career. The Government had accepted the same with further 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.

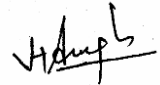
3. **Sixth CPC Recommendations on Date of implementation:**

- 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, ie. 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 upheld the 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. **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.**

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. Reg MACPS.**
- **1 Copy of judgment of Supreme Court**
 - **on Date of effect of MACPS as part of Pay structure**

Copy for information & necessary action to:

1. Secretary (Establishment), Railway Board, Rail Bhawan, New Delhi - 110001
2. Executive Director (Pay Commission), Railway Board, Rail Bhawan, 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.

REPORTABLE

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)

WITH

CIVIL APPEAL DIARY NO. 5183 OF 2017

CIVIL APPEAL DIARY NO. 5184 OF 2017

CIVIL APPEAL DIARY NO. 6249 OF 2017

CIVIL APPEAL DIARY NO. 7888 OF 2017

CIVIL APPEAL DIARY NO. 18265 OF 2016

CIVIL APPEAL NO. 244 OF 2017

CIVIL APPEAL DIARY NO. 31768 OF 2016

CIVIL APPEAL DIARY NO. 38019 OF 2016

CIVIL APPEAL DIARY NO. 42810 OF 2016

CIVIL APPEAL DIARY NO. 42879 OF 2016

DIARY NO. 4546 OF 2017

DIARY NO. 11491 OF 2017

DIARY NO. 11871 OF 2017

DIARY NO. 13664 OF 2017

DIARY NO. 13665 OF 2017

DIARY NO. 13666 OF 2017

DIARY NO. 18186 OF 2017

DIARY NO. 18048 OF 2017

DIARY NO. 18045 OF 2017

DIARY NO. 18185 OF 2017

DIARY NO. 22593 OF 2017

DIARY NO. 30116 OF 2017

DIARY NO. 23164 OF 2017

DIARY NO. 11493 OF 2017

DIARY NO. 28798 OF 2017

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.

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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.

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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.

¹ WP(C) No.23465 of 2013(G)

² LPA 405 of 2016

³ O.A. No. 541 of 2012

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