

INDIAN RAILWAYS TECHNICAL SUPERVISORS ASSOCIATION

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

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No. IRTSA/Memo RB / 2018-8

Date: 8-8-2018

Member Staff,
Railway Board.

Respected Sir,

Subject: Benefits of MACPS w.e.f. 1.1.2006 - since MACPS is given as a part of pay structure and is not an allowances as per recommendations Sixth CPC, Resolution of Govt. thereon and as per judgment of Supreme Court.

- Ref: 1. Ministry of Defence letter No.14(1)/99-D(AG), dated 25.07.2018.
2. Judgement of Supreme Court in Civil Appeal No.3744 of 2016 Dated 8-12-2017.
3. Recommendations of Sixth Central Pay Commission para 6.1.15, 6.5.2 & 6.5.4
4. Ministry of Finance Notification No.1/1/2008-I C & Government of India Resolution dated 29.8.2008
5. Railway Board's 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,
6. Ministry of Railways Notification RBE No. 103/2008 dated 04.09.2008
7. Railway Service (Revised Pay) Rules, 2008, No. PC-VI/2008//RSRP/1 (RBE No:108/2008) dated 11.09.2008

1. a) We seek your kind intervention on date of implementation of MACPS w.e.f 1.1.2006 (instead of 1-9-2008) as has been held by the Supreme Court of India vide its judgment cited above wherein MACPS has been held to be a part of pay structure recommended by 6th CPC and not to be considered as allowance which were implemented from 1.9.2008. The judgement has cited the Resolution of the Government of India dated 30-8-2008 referred to above as Notification of MOF where in in MACPS has been defined as Pay and not as Allowance and has thus to be allowed from 1-1-2006.

b) Consequent upon the said judgment of the Supreme Court Judgement Ministry of Defense made the MACP Scheme operational from 01.01.2006vide its orders dated 25-7-2018 cited above.

2. Sixth CPC Recommendations on Date of implementation:

a) Reg. Pay Structure: 6th CPC in para 6.5.2 & 6.5.4 of its report (Annexure-I) 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. Pay: 6th CPC had recommended for implementation of revised pay 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.

3. 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

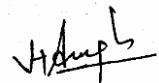
implemented MACPS and all allowances except DA w.e.f.1.9.2008. Relevant rules of finance ministry resolution is attached as Annexure-II.

4. 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-III
5. 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-IV
6. 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 implemented revised pay w.e.f. 1.1.2006. Only the allowances were implemented w.e.f.1.9.2008 while the Pay & DA were revised w.e.f. 1-1-2006.
7. MACPS is a part of pay structure. But MACPS order have been implemented w.e.f.1.9.2008, which is against the 6th CPC recommendations and Government of India's resolution issued vide MOF Notification dated 29-8-2008.
8. A). Hon'ble Supreme Court of India in Civil Appeal Diary No.3744 of 2016 decided on 8-12-2017(copy of relevant para of judgement attached as Annexure-V) had 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.
b). The Court had further ordered and held that there can be no dispute that grant of ACP is part of the pay structure.
C). Apex Court is very clear on its Judgement that, resolution dated 30.08.2008 on implementation of 6th CPC recommendations (with regard to pay structure, pay scales, grade pay, etc) are applicable from 01.01.2006. This is a decision of the Cabinet and could not have been modified by issuing executive instructions.
D). The apex court also disposed bunch of appeals by a common Judgement since similar questions of law are involved.
9. Consequent upon the Judgement of Honb'le Suprem Court, Ministry of Defence vide letter No.14(1)/99-D(AG), dated 25.07.2018 (copy attached as Annexure-VI) made the MACP Scheme operational from 01.01.2006.
10. It is also pertinent to mention that rules & procedures for MACPS is being followed uniformly for all Government employees irrespective of departments / ministries, who are all covered under Central Pay Commissions.
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, accepted by the Government of India vide its Resolution Dated 29-8-2008 and implemented by MoD consequent upon the Judgement of Hon'ble Supreme Court.

Thanking you in anticipation, with kind regards,

Encls: 6 Annexure

Yours' faithfully,



Harchandan Singh,
General Secretary, IRTSA

Copy for information & necessary action to:

- Secretary (Establishment) Railway Board, Rail Bhawan, New Delhi - 110001

Encls: 6 Annexure

1. **6th CPC recommendations on Date of effect**
2. **Relevant para of Gazette of India, Extraordinary, Ministry of Finance Notification No.1/1/2008-I C, dated 29.8.2008**
3. **Relevant Para of Ministry of Railways Notification RBE No. 103/2008 dated 04.09.2008**
4. **Rule 4 of Railway Service (Revised Pay) Rules, 2008, No. PC-VI/2008/I/RSRP/1 (RBE No:108/2008) dated 11.09.2008**
5. **Relevant Para of Judgement of Hon. Supreme Court in Civil Appeal No.3744 of 2016 Dated 8-12-2017**
6. **Copy of Ministry of Defence letter No.14(1)/99-D(AG), dated 25.07.2018.**

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 Gazette Extraordinary, No.1/1/2008-I C dated 29.8.2008

Govt. vide resolution 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 applicable to Group 'A' employees.

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

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.

Railway Service (Revised Pay) Rules, 2008, No. PC-VI/2008/I/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.

(The Apex Court find no merit in bunch of appeals (25 appeals along with civil appeal no. 3744) made on behalf of Union of India and disposed all pending applications in favour of extending the benefit of MACPS w.e.f. 01.01.2006.)

Excerpts from the Judgment of the Apex Court

**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)

Para 2. This bunch of appeals is being disposed of by a common judgment since similar questions of law are involved.

Para 5. 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.

Para 6. The question that arises for decision is whether the benefit of MACP is applicable from 01.01.2006 or from 01.09.2008.

Para 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.

Para 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.

Para 11. 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.

Government of India
Ministry of Defence

No. 14(1)/99-D(AG)

New Delhi, the 25th July 2018

To

The Chief of the Army Staff
New Delhi.

Subject: Modified Assured Career Progression Scheme (MACPS) for PBOR of Army.

Sir,

Consequent upon the judgement of Hon'ble Supreme Court dated 08-12-2017, in the matter of Civil Appeal Diary No.3744 of 2016 (UOI Vs Shri. Balbir Singh Turn & Anr), I am directed to refer to this Ministry's letter No. 14(1)/99-D(AG) dated 30 May 2011 on the above subject and to state that the President is pleased to make the following amendment in para 5 of the aforesaid letter:

FOR : "The scheme would be operational w.e.f. 01 Sep 2008"
READ: "The scheme would be operational w.e.f. 01 Jan 2006"

2. The other terms and conditions (including eligibility), as mentioned in the MoD letter No. 14(1)/99-D(AG) dated 30 May 2011 would continue to remain the same.

3. This issues with the concurrence of the Ministry of Defence (Finance) vide their Dy. No. 1270/Addl.FA(AN)/JS dated 27-06-2018.

Yours faithfully,
Sd/-
(Balbir Singh)
Under Secretary to the Govt. of India