

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

**ORIGINAL APPLICATION No.635/2013 & 509/2014
(Contempt Petition No.210/23/2014 in OA No.635/2013)**

Dated this Thursday, the 30th day of January, 2020

**CORAM : R.VIJAYKUMAR, MEMBER (A)
R.N.SINGH, MEMBER (J)**

OA No. 635/2013

Sushma Hemant Kabir, Age : 60 years,
(Date of birth : 18.10.1953),
working as: Chief Matron under A.C.M.S. with Western Railway,
Churchgate Dispensary, Churchgate, Mumbai 400 020
and Residing at: N.G. Park, "C" Wing, 703,
Rawal Pada, Borivali (East), Mumbai 400 068. - Applicant

OA No.509/2014

1. Bhakti Pandurang Raut wd/o of Late Pandurang M. Raut,
Date of Birth : 27.09.1955, age – 60 years,
worked as : Chief Matron (Group "C" Post),
under Medical Director, Jagjivanram Hospital,
Maratha Mandir Marg, Mumbai Central, Mumbai 400 008,
and residing at: 12-E, 602 Spring Leaf,
Lokhandwala Complex, Kandivali (East), Mumbai 400 101.
2. Purna Kishor Awale, wife of Kishor Sadashiv Awale,
Date of Birth : 23.06.1960, age -54 years,
working as : Chief Matron (Group "C" Post),
under Medical Director, Jagjivanram Hospital,
Maratha Mandir Marg, Mumbai Central, Mumbai 400 008,
and residing at : 45/B, Jagjeevanram Hospital Compound,
4th Floor, Maratha Mandir Marg, Mumbai 400 008.
3. R. Leelavathy Dayanandan wife of P.Dayanandan,
Date of Birth: 15.08.1956, age – 58 years,
working as : Chief Matron (Group "C" Post),
under Medical Director, Jagjivanram Hospital,
Maratha Mandir Marg, Mumbai Central, Mumbai 400 008,
and residing at : A-24, Jagjeevanram Hospital Compound,
5th Floor, Maratha Mandir Marg, Mumbai 400 008.
4. Kumari George wife of K.A. George,
Date of Birth: 01.11.1956, age – 57 years,
working as : Chief Matron (Group "C" Post),
under Medical Director, Jagjivanram Hospital,
Maratha Mandir Marg, Mumbai Central, Mumbai 400 008,
and residing at :C-61, Jagjeevanram Hospital Compound,
4th Floor, Maratha Mandir Marg, Mumbai 400 008.

5. R.Chandramathy Vishwanathan wife of K.R. Vishwanathan,
Date of Birth : 15.11.1954, age – 59 years,
working as : Chief Matron (Group “C” Post),
under Medical Director, Jagjivanram Hospital,
Maratha Mandir Marg, Mumbai Central, Mumbai 400 008,
and residing at : A-23, Jagjeevanram Hospital Compound,
4th Floor, Maratha Mandir Marg, Mumbai 400 008.
6. Nirubala Sharad Hiwale, wife of Sharad K. Hiwale,
Date of birth : 15.08.1958, age – 55 years,
working as : Chief Matron (Group “C” Post),
under Medical Director, Jagjivanram Hospital,
Maratha Mandir Marg, Mumbai Central, Mumbai 400 008,
and residing at : 87/4, Western Railway Quarters,
Matunga Road (East), Mumbai 400 019.
7. Mrs. Dina Lad wife of Shri Arvind Lad,
Date of birth : 07.04.1959, age – 55 years,
working as : Chief Matron (Group “C” Post),
under Medical Director, Jagjivanram Hospital,
Maratha Mandir Marg, Mumbai Central, Mumbai 400 008,
and residing at : B/30, Jagjeevanram Hospital Compound,
Maratha Mandir Marg, Mumbai 400 008.
8. Mrs. Mary Jacob wife of Mr. K.M. Jacob,
Date of birth: 15.11.1955, age – 58 years,
working as : Chief Matron (Group “C” Post),
under Medical Director, Jagjivanram Hospital,
Maratha Mandir Marg, Mumbai Central, Mumbai 400 008,
and residing at : K.M. Jacob, A/15, Flat No.304,
Near D.B. Vora School, Sanskruti-I, Mira Road (East),
District – Thane, Pin Code 401 107.
9. Mrs. Naina Jayesh Patel, wife of Jayesh Kantilal Patel,
Date of Birth : 15.04.1960 age – 54 years,
working as : Chief Matron (Group “C” Post),
under Medical Director, Jagjivanram Hospital,
Maratha Mandir Marg, Mumbai Central, Mumbai 400 008,
and residing at : 302/B-67, Sector No.I, Shanti Nagar
Opp. TMT Bus Stop, Mira Road (East),
State of Maharashtra, Pin Code : 401 107.
10. Kalavathy S.G. Wife of Shyamsunder Gollapalli,
Date of Birth : 24.01.1960, age – 54 years,
working as : Chief Matron (Group “C” Post),
under Medical Director, Jagjivanram Hospital,
Maratha Mandir Marg, Mumbai Central, Mumbai 400 008,
and residing at : A/8, Ist Floor, Western Railway Quarters,
Mumbai Central, Mumbai 400 008.
11. Aleyamma Rajan, wife of Rajan Anthony,
Date of Birth : 13.05.1957, age – 57 years,

working as : Chief Matron (Group "C" Post),
under Medical Director, Jagjivanram Hospital,
Maratha Mandir Marg, Mumbai Central, Mumbai 400 008,
and residing at : A-6, Jagjeevanram Hospital Compound,
Maratha Mandir Road, Mumbai Central, Mumbai 400 008.

12. Mrs. Chandra Rambhau Patil,
wife of Mr. Rambhau Tarachand Patil,
Date of Birth : 18.12.1965, age – 48 years,
working as : Chief Matron (Group "C" Post),
under Medical Director, Jagjivanram Hospital,
Maratha Mandir Marg, Mumbai Central, Mumbai 400 008,
and residing at : Jagjeevanram Hospital Staff Quarters,
Western Railway B-39, 2nd Floor, Maratha Mandir Road,
Mumbai 400 008.
13. Mrs. Shalini Dinesh Pillai, wife of Mr. Dinesh Pillai,
Date of Birth : 25.03.1963, age – 52 years,
working as : Chief Matron (Group "C" Post),
under Medical Director, Jagjivanram Hospital,
Maratha Mandir Marg, Mumbai Central, Mumbai 400 008,
and residing at : C-1002, Samarpan,
Off Western Express Highway, Opp. Vasanth Marvel,
Borivali (East), Mumbai 400 066.
14. Muthamil Selvi Suresh, wife of Mr. Suresh,
Date of Birth : 08.06.1954, age – 50 years,
working as : Chief Matron (Group "C" Post),
under Medical Director, Jagjivanram Hospital,
Maratha Mandir Marg, Mumbai Central, Mumbai 400 008,
and residing at : 102/16, Western Railway Colony,
Matunga Road, Matunga, Mumbai 400 019.
15. Mrs. Lakshmi Dasgaonkar,
wife of Mr. Namdev Dasgaonkar,
Date of Birth : 06.04.1957, age – 57 years,
working as : Chief Matron (Group "C" Post),
under Medical Director, Jagjivanram Hospital,
Maratha Mandir Marg, Mumbai Central, Mumbai 400 008,
and residing at : C-67, 5th Floor, Jagjeevanram Hospital
Quarters, Maratha Mandir, Mumbai 400 008. - Applicants (By
Advocate Shri R.G.Walia)

Versus

1. The Union of India, Through the Chairman,
Railway Board, Rail Bhavan, New Delhi 110 011.
2. General Manager, Western Railway, Headquarters Office,
Churchgate, Mumbai 400 020.
3. The Medical Director, Jagjivanram Hospital,
Maratha Mandir Marg, Mumbai Central,

Mumbai 400 008.
(By Advocate Shri V.S.Masurkar)

- Respondents in both OAs

ORAL ORDER

Per: R.Vijaykumar, Member (A)

The OA Nos.635/2013 and 509/2014 have been filed on 15.10.2013 and 14.08.2014 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs in OA No.635/2013:

“8(a). This Hon'ble Tribunal may be pleased to call for the records and proceedings which led to the passing of the impugned orders /letter dated 13.12.2012 and 23.09.2013 passed by the Respondents and after going through its propriety, legality and constitutional validity be pleased to quash and set aside the same with full consequential benefits.

8(b). This Hon'ble Tribunal will be pleased hold and declare that the Grade Pay of Rs.6600/- granted to the Applicants vide Order dated 08.02.2010 (Annx.“A7”) under the Modified Assured Career Progression Scheme 2008 (MACP) is legal, valid and subsisting.

8(c). Cost of this original application is provided for;

8(d). Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.”

and in OA No.509/2014, the applicant prayed for the following reliefs:

“8(a). This Hon'ble Tribunal may be pleased to call for the records and proceedings which led to the passing of the impugned orders /letter dated 13.12.2012, 23.09.2013 and 04.08.2014 passed by the Respondents and after going through its propriety, legality and constitutional validity be pleased to quash and set aside the same with full consequential benefits.

8(b). This Hon'ble Tribunal will be pleased hold and declare that the Grade Pay of Rs.6600/- granted to the Applicants vide Order dated 08.02.2010 under the Modified Assured Career Progression Scheme 2008 (MACP) is legal, valid and proper and accordingly direct the Respondents to grant full benefit and consequential benefits of the same i.e. Pay Fixation, Pension Fixation, Arrears

of Pay and Salary, Arrears of Pension etc etc with 18% interest thereon after retirement.

8(c). Cost of this original application is provided for;

8(d). Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case."

2. A Contempt Petition No.23/2014 has also been filed by applicants alleging violation of the interim orders dated 21.10.2019 of this Tribunal.

3. The applicants who were working as Matron/Chief Matron were granted 3rd MACP in PB III with Grade Pay of Rs.6,600/- in the orders of respondents dated 08.02.2010 with effect from their respective dates of eligibility which, in the case of the applicant was from 01.09.2008. Subsequently, the respondents have acted on the basis of the instructions received from the Railway Board in RBE No.142/2012 by which it was conveyed that financial upgradation under the ACP/MACP Scheme cannot be to a higher Grade Pay than what can be allowed to an employee in a formal promotion. In the present case, applicant's next promotion was the merged post of Matron/Chief Matron in Pay Band PB III and with the same Grade Pay as in the case of the Chief Matron of Rs.5,400/-. Therefore, without issuing any show cause

notice, the respondents passed the impugned orders of recovery dated 23.09.2013 (Annexure A-1) and applied them to both existing and retired/superannuated employees.

4. The learned counsel for the applicant argues that a similar matter had also been decided by the Principal Bench of the Tribunal in OA No.141/2012 dated 09.05.2012 (Annexure A-3) in which it was held as under :

“7. We have to adjudicate what has been provided in the MACP Scheme. Annexure-I is the copy of the MACPS introduced as per recommendations of the 6th CPC. It is also an admitted fact that as per provisions of MACPS, an employee is entitled for the next higher Grade Pay while granting third MACPS upgradation. What is the meaning of immediate next Higher Grade Pay. All the ANS will be in the Grade Pay of Rs.5400/- and the DNS, which is the promotional post, will also be in the Grade Pay of Rs.5400/-. The criteria for promotion is entirely different. While granting promotion to ANS to DNS, one would be entitled for one additional increment and then her pay is to be fixed at the next higher stage, whereas while granting benefit of MACPS, one is entitled for the next higher Grade Pay. It is immaterial that ANS, the feeder cadre, and DNS, the promotional cadre, are in the same Grade Pay of Rs.5400/-, and while granting the benefit of MACPS, ANS will draw higher Grade Pay of Rs.6600/- in comparison to DNS, the promotional post, of Rs.5400/-. Earlier while granting the benefit of MACPS, the pay of the applicants was fixed with Grade Pay of Rs.6600/-. Annexure A-6 is the copy of the order dated 01.04.2011 fixing the pay of the applicants in PB-3 with Grade Pay Rs.6600/-. It has been issued by the Government of India, Office of Medical Superintendent, Safdarjung Hospital & VMMC, New Delhi, but afterwards his Grade Pay was revised and the said order was withdrawn, and Grade Pay of Rs.5400/- was granted to the applicants. It has also been stated by the applicants that their counter-parts in AIIMS are getting the Grade Pay of Rs.6600/-. Earlier they were in the scale of PB-3 Rs.15600-39100 + Grade Pay Rs.5400/-, and were granted the next higher Grade Pay of Rs.6600 under MACPS, and it has not been stated by the respondents that this order has been reviewed. When the counter-parts of the applicants in AIIMS are getting the same

higher Grade Pay of Rs.6600/-, then how the applicants can be discriminated. Annexure A-5 contains answers to certain frequently asked questions on MACPS. At serial number 6, the point of doubt, Whether the promotions in same grade would be counted for the purpose of MACPS? has been replied as follows:

The financial upgradation under the MACPS is in the immediate next higher grade pay in the hierarchy of recommend revised pay bands and grade pay as given in CCS (Revised Pay) Rules, 2008. However, if the promotional hierarchy as per recruitment rules is such that promotions are earned in the same grade pay, then the same shall be counter for the purpose of MACPS.

We are not concerned here with promotion, but we have to adjudicate as to what Grade Pay would be admissible while granting the benefit of third MACPS on completion of 30 years of service without promotion, and according to the said query, the immediate next higher Grade Pay is admissible to such an employee, and the intention of granting MACPS is also the same. The respondents have not disputed that the next higher Grade Pay is to be granted while granting the benefit of third MACPS upgradation, even though they have disputed the admissibility of Grade Pay of Rs.6600/- because the ANS is the feeder cadre for the promotional post of DNS, and the Grade Pay of both ANS and DNS is Rs.5400/-. When an ANS will be promoted as DNS, then she would be entitled for Grade Pay of Rs.5400/- whereas ANS, the feeder post, will be entitled for Grade Pay of Rs.6600/- while granting the benefit of third MACPS is different and both are to be decided on different parameters.

8. In this connection, the learned counsel for the applicants cited a judgment of the Hon'ble High Court of Delhi in WP(C) No.3420/2010 in the matter of R.S.Sengor & others V. Union of India & others, decided on 04.04.2011. The Hon'ble High Court has held as follows:

11. Whatever may be the dispute which may be raised with reference to the language of paragraph 2 of the MACPS the illustration as per para 4 of annexure 1 to the OM, contents whereof have been extracted hereinabove, make it clear that it is the next higher Grade Pay which has to be given and not the grade pay in the next hierarchical post and thus we agree with the Respondents that Inspectors have to be given the Grade Pay after 10 years of Rs.4800/- and not Rs.5400/- which is the Grade Pay of the next Pay Band and relatable to the next hierarchical post. To put it pithily, the MACPS Scheme requires the hierarchy of the Grade Pays to be adhered to and not the Grade Pay in the hierarchy of posts.

Hence, in view of the judgment of the Hon'ble High Court, it is evident to that the next higher Grade Pay has to be given and not the Grade Pay in the next hierarchical post. It is immaterial that the next hierarchical post is DNS and on that post the Grade Pay is Rs.5400/-, but while granting the third financial upgradation under MACPS, the benefit is to be granted as per the provisions thereof, and it is the next higher Grade Pay which is admissible to an employee, and the next higher Grade Pay is Rs.6600/-. Since ANS is in the Grade Pay of Rs.5400/-, while granting the benefit of third MACPS, ANS will be given the Grade Pay of Rs.6600/- which is the next Grade Pay.

9. Hence, in view of the judgment of the Hon'ble High Court of Delhi, in view of the wordings of the MACPS, as well as in view of the MACPS allowed to ANS of AIIMS, the applicants are entitled to the Grade Pay of Rs.6600/- and not Rs.5400/-. The order passed by the respondents dated 20.12.2011 is not in accordance with the MACPS and it is against the very spirit of the MACPS, and if the contention of the respondents is to be accepted, then no financial upgradation will be given to the ANS even after grant of third MACPS, which is not the intention of introduction of the MACP Scheme, and the applicants are entitled to the Grade Pay of Rs.6600/- and no recovery will be made from the applicants of the difference paid to them. The OA deserves to be allowed."

5. This matter was taken to the Hon'ble High Court of Delhi in WP (C) No.5146/2012 which was decided on 24.08.2012 (Annexure A-4) and in which it was held as under:

"17. On going through the said office memorandum it is apparent that the so-called clarification, on which the learned counsel for the petitioner is relying, has been issued by the Ministry of Finance and not by the DoPT which has issued the MACPS. In our view, the so-called clarification does not improve the position of the petitioner.

18. Most importantly, this very issue had come up for consideration before this Court in the case of R.S. Sengor and Ors v. Union of India and Ors, in W.P.(C) 3420/2010 decided on 04.04.2011. In that case the petitioners were in Pay Band-1 and had a corresponding grade pay of

Rs.1900/-. The next hierarchical post was also in Pay Band-1 but had a grade pay of Rs.2400/-. The petitioners herein claimed that since the next hierarchical post had a pay band of Rs.2400/-, they should, on financial upgradation, under the MACPS, be granted the grade pay of Rs.2400/-. However, what the respondents in that case had done was to grant the petitioner therein the grade pay of Rs.2000/- which was the next higher grade pay though, not the grade pay corresponding to the next hierarchical post. The Division Bench dismissed the petition of the writ petitioner therein and held as under:-

“10. The question would be whether the hierarchy contemplated by the MACPS is in the immediately next higher Grade Pay or is it the Grade Pay of the next above Pay Band.

11. Whatever may be the dispute which may be raised with reference to the language of paragraph 2 of the MACPS the illustration as per para 4 of Annexure I to the OM, contents whereof have been extracted hereinabove, make it clear that it is the next higher Grade Pay which has to be given and not the Grade Pay in the next hierarchical post and thus we agree with the Respondents that Inspectors have to be given the Grade Pay after 10 years in sum of Rs.4800/- and not Rs.5400/- which is the Grade Pay of the next Pay Band and relatable to the next hierarchical post. To put it pithily, the MACPS Scheme requires the hierarchy of the Grade Pays to be adhered to and not the Grade Pay in the hierarchy of posts.”

19. The Division Bench had clearly indicated that the MACPS requires the hierarchy of the grade pays to be adhered to and not the grade pay in the hierarchy of posts. This is exactly what the Tribunal has followed in its impugned order. If this is to be given effect to, we see no reason why this Court should not hold that the respondents are entitled to the next higher grade pay i.e. Rs.6600/-. The Tribunal has only directed that the respondents be given the next higher grade pay of Rs.6600/- based on the decision of this Court in R.S. Sengor (supra). We see no reason to take a different view. Consequently, the writ petition is dismissed. There shall be no order as to costs. The petitioners are given time of one month from today to implement the directions contained in the Tribunal's order, as affirmed by us.”

6. The respondents took this matter further to the Hon'ble Apex Court which condoned the

delay, did not found any valid and legal grounds and accordingly, vide order dated 04.03.2013 (CC No.439/2013) (Annexure A-5), the SLP was dismissed. The present case is identical in terms of the promotion hierarchy to the case decided above and is squarely covered in facts. Therefore, the same benefit should be offered to the applicants by the respondents. The learned counsel for the applicant also made reference to the instructions in RBE No.87/2018 dated 14.06.2018 which reads as under:

“Sub:- Grant of Grade Pay Rs.6600/-B-3 to Nursing Personnel i.e. Staff Nurses/Nursing Sister/Matron/Chief Matron under 3rd MACP.

The Staff Side (NFIR and AIRF) had demanded for grant of 3rd financial upgradation in the Grade Pay of Rs.6600/-PB-3 to Nursing Personnel under MACPS on the basis of OM dated 09.09.2016 issued by Ministry of Health and Family Welfare. The matter was examined in consultation with the Deptt. Of Personnel and Training and it has now been decided as under:

a) Those Staff Nurse/Nursing Sister/Matron/Chief Matron who have been awarded 1st and 2nd financial upgradation under ACP Scheme in the hierarchy pay scale of Rs.5500-9000 and Rs.6500-10500 upto 31-8-2008 may be granted a replacement Grade Pay of Rs.4800/PB-2 and Rs.5400/PB-3. Therefore, the 3rd financial upgradation under MACP Scheme, if granted to these categories of officials, may be revised to Rs.6600/PB-3 from Rs.5400 in PB-3.

b) Those Staff Nurse/Nursing Sister/Chief Matron who have been granted 1st ACP in the pre-revised pay scale of Rs.5500-9000 upto 31-8-2008 may be placed in the replacement Grade Pay of Rs.4800/PB-2. They will be entitled for grant of 2nd and 3rd financial upgradation under MACP Scheme in the Grade Pay of Rs.5400/PB-2 and Rs.5400/PB-3 only.

c) All the remaining Staff Nurse/Nursing Sister/Matron/Chief Matron who are to be granted 1st, 2nd and 3rd financial upgradation under MACP Scheme may be granted next higher Grade Pay.

2. This issues with the concurrence of the Finance Directorate of the Ministry of Railways."

7. Following these instructions, he also submits a copy of the respondents Western Railway, dated 25.11.2013, which refers to these instructions and grants similarly placed Matrons of the Western Railway in Rajkot Division, the benefit of such upgradation as claimed by the applicant in the present case.

8. The learned counsel for the respondents was heard. He submits that these matters had been extensively discussed with the Federation of Railway employees and order had been issued as far back as in RBE No.95/2013 dated 12.09.2013 reiterating their previous instructions. He submits that the respondents in the Ministry of Railway had made formal consultation with the Ministry of Health and the DOPT on this grant of Rs.6,600/- as Grade Pay and refers to the purposes and contents of the MACP scheme including its specific provision and vehemently argues for considering that as the scheme was originally ordered by the DOP&T and reproduced and recirculated by the respondents, any fresh interpretation of the scheme would take effect from date of orders. The scheme never envisaged any upgradation which would grant a

particular employee the benefit of Grade Pay higher than the Grade Pay to which he would obtain had he been regularly promoted to the hierarchically higher post. By virtue of this principle, he argues that the Chief Matron could only get a pay fixation in the same Pay Band and not the Grade Pay of Rs.6,600/- since it was in excess of the promotional post of Assistant Nursing Officer, a Group 'B' post.

9. We have heard the learned counsels for the parties at length and we have perused the pleadings on record.

10. However, the issue involved in the present case is no more res-integra as held in **R.S.Sengor** supra case which has been affirmed by the Hon'ble Supreme Court also. Furthermore, the same is also evident from the instructions/clarifications issued by the Railway Board itself vide 'their circular RBE No.87/2018 dated 14.06.2018 refer to hereinabove particularly paragraph (c) thereof.

11. In view of the aforesaid facts and law, the OA is allowed. The impugned orders dated 23.09.2013 and 13.12.2012 are quashed and set aside. It is further held that the applicant shall be entitled for all consequential benefits based on the Grade Pay of Rs.6,600/-

upon grant of upgradation under 3rd MACP.

12. In the aforesaid facts and circumstances, Shri R.G.Walia, learned counsel for the petitioner does not press the aforesaid Contempt Petition and the same is accordingly disposed of as not pressed.

13. The respondents are further directed to grant the benefits as admissible to the applicants in view of the aforesaid within ten weeks from the date of receipt of a certified copy of this order.

14. Pending MAs also stands disposed of accordingly.

15. However, in the facts and circumstances, no costs.

(R.N. Singh)
Member (Judicial)

(R. Vijaykumar)
Member (Administrative)

kmg*

JD
65/02/20

