



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No. 669/2020
MA No. 1143/2020
With
OA No. 664/2020
OA No. 670/2020
MA No. 1144/2020

This the 07th day of January, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

1.OA No. 669/2020

Ms. Neeru Gulati,
Aged 57 years,
W/o Mr. Sunil Gulati,
Working as ANS,
Dr. Ram Manohar Lohia Hospital,
Ministry of Health and Family Welfare,
Govt. of India,
R/o 6/170, DDA Flats, East of Kailash,
Garhi Lajpat Nagar, New Delhi.

... **Applicant**

(through Mr. Padma Kr. S., Advocate)

Versus

1. Union of India,
Through Secretary,
Ministry of Health and Family Welfare,
Govt. of India,
Nirman Bhawan, New Delhi – 110011.
2. The Director General,
Health Services, Govt. of India,
Nirman Bhawan,
New Delhi – 110011.
3. The Medical Superintendent,

Dr. Ram Manohar Lohia Hospital,
New Delhi.

... Respondents

(through Mr. Manish Kumar , Advocate)

2.OA No. 664/2020



Ms. Madhulika Greene,
Age 58 years,
W/o Mr. A. C. Greene,
Working as ANS,
Dr. Ram Manohar Lohia Hospital,
Ministry of Health and Family Welfare,
Govt. of India,
R/o C-61, Y-1 C Block, Dilshad Garden,
New Delhi.

... Applicant

(through Mr. Padma Kr. S., Advocate)

Versus

1. Union of India,
Through Secretary,
Ministry of Health and Family Welfare,
Govt. of India,
Nirman Bhawan, New Delhi – 110011.
2. The Director General,
Health Services, Govt. of India,
Nirman Bhawan,
New Delhi – 110011.
3. The Medical Superintendent,
Dr. Ram Manohar Lohia Hospital,
New Delhi.

... Respondents

(through Mr. K.M. Singh , Advocate)

3.OA No. 670/2020

Ms. Asha Rani Arora,
Age 57 years,
W/o Mr. Surender Arora,
Working as ANS,

Dr. Ram Manohar Lohia Hospital,
Ministry of Health and Family Welfare,
Govt. of India,
R/o 11/96, Subhash Nagar,
New Delhi – 27.

... Applicant

(through Mr. Padma Kr. S., Advocate)



Versus

1. Union of India,
Through Secretary,
Ministry of Health and Family Welfare,
Govt. of India,
Nirman Bhawan, New Delhi – 110011.
2. The Director General,
Health Services, Govt. of India,
Nirman Bhawan,
New Delhi – 110011.
3. The Medical Superintendent,
Dr. Ram Manohar Lohia Hospital,
New Delhi.

... Respondents

(through Mr. Sanjeev Yadav, Advocate)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman:

In this batch of OAs, the challenge is to 3 separate office orders dated 05.02.2020. In the year 2015, the applicants were working as Nursing Officers in the Central Health Services in the Grade Pay of Rs.5400/-. As a measure of extending the benefit of 3rd MACP, they were put in the Grade Pay of Rs.6600/. Audit objections seem to have been raised at a later stage for this. Through the impugned orders, the pay

structure of the applicants was revised in such a way that 3rd MACP was granted in the form of further increment, instead of next higher grade pay. The applicants challenge the said proceedings.



2. It is the case of the applicants that the respondents did not issue any notice to them before passing the impugned order, and that even on merits, the impugned order cannot be sustained. It is also stated that when the benefit was extended by the respondents on their own accord to the applicants, the attempt to recover the differential amount is totally untenable in law.
3. The respondents filed a detailed counter affidavit. It is stated that the extension of the benefit of 3rd MACP to the applicants ought to have been in the next stage of the pay and instead they were put in the next higher grade pay, and that the same has resulted in serious anomaly. They contend that the correction of such a serious anomaly does not warrant any notice or inquiry, and that the applicants are liable to refund the excess amount drawn by them on the basis of wrong fixation.
4. The applicants filed rejoinder in one of the cases.
5. We heard Shri Padma Kumar S., learned counsel for the applicants, Shri Manish Kumar, Shri K. M. Singh and Shri

Sanjeev Yadav, learned counsel for the respondents in respective OAs.



6. As a measure to avoid stagnation in the service of the Central Government employees, the government initially introduced the ACP Scheme and that in turn was replaced by MACP. While under the former, the benefit is to allow the pay scale attached to next higher post in case the employee did not earn promotion for a period of 12 years, in the latter, the benefit is in the form of next higher stage of pay, if stagnation continued for 10 years. It is to be allowed in 3 stages, namely, on completion of 10, 20 and 30 years of service in case the employees did not earn promotion during those spells.

7. Uncertainty prevailed as to the nature of benefit to be extended under MACP. Some departments or establishments have taken the view that it should be in the form of next higher grade pay.

8. The matter was examined in detail with reference to the concerned O.M. and it was ultimately decided that the benefit shall be in the form of next higher stage in the pay scale and not the Grade Pay. Recently, the Hon'ble Supreme Court also has decided this issue finally in the above terms.

9. It is not in dispute that the applicants were extended the Grade Pay of Rs.6600/- at a time when they were in the Grade

Pay of Rs.5400/- This was totally impermissible in law. It is not known as to whether the concerned officer, who passed the relevant orders did it inadvertently or knowing fully well about the scheme. The respondents need to verify this aspect. Since huge amount of public money is involved, the responsibility also needs to be fixed on the concerned official. We do not find any basis to interfere with the impugned orders insofar as they have re-determined the nature and extent of MACP to the applicants.

10. However, the direction as to recovery of amount paid to the applicants, cannot be sustained. The reason is that it was not even alleged that the applicants are in any way responsible for being put in the Grade Pay of Rs.6600/-. In view of the judgment of Honb'le Supreme Court in **State of Punjab & others v. Rafiq Masih (White Washer)** CA No. 11527/2014, such recoveries cannot be permitted.

11. We, therefore, partly allow the OAs upholding the re-fixation of the pay structure of the applicants through the impugned orders, but setting aside the impugned orders, insofar as they direct recovery. We also make it clear that if any anomaly has taken place in granting the increment to the applicants in the form of 3rd MACP, the applicants can make a



representation in that behalf. Pending MAs shall stand disposed of.

There shall be no order as to costs



(Mohd. Jamshed) (Justice L. Narasimha Reddy)
Member (A) Chairman

/pj/sunil/vb/ankit/