



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/00481/2020

Date of order: 17.7.2020

Present : Hon'ble Dr. Nandita Chatterjee, Administrative Member

Jhuma Paswan,
Wife of Baliram Paswan,
Daughter of Shiwlal Paswan,
Aged about 43 years,
Working as Staff Nurse at
ESI-PGIMSR & ESIC Hospital & ODC (E.Z)/Joka,
Residing at Mangolik Abasan,
B2(2), Joraghat Strand Road,
Hooghly,
Chinsurah,
Hooghly,
West Bengal – 712101.

.... Applicant

- VERSUS -

1. Union of India,
Service through the Secretary,
Ministry of Labour and Employment,
Rafi Marg,
Shram Shakti Bhawan,
New Delhi – 110 001.
2. The Director General,
Employees State Insurance Corporation,
Hqrs. Office at CIG Marg,
Panchadeep Bhawan,
New Delhi – 110 002.
3. The Additional Commissioner & Regional Director,
Employees State Insurance Corporation,
Regional Office,
Grant Lane,
Kolkata – 700 012.
4. The Medical Superintendent,



ESI-PGIMSR & ESIC Hospital & ODC (E.Z.),
Diamond Harbour Road,
Joka,
Kolkata - 700 104.

5. The Dy. Medical Superintendent,
ESI-PGIMSR & ESIC Hospital & ODC (E.Z.),
Diamond Harbour Road,
Joka,
Kolkata - 700 104.

6. The Assistant Director (Admn.),
ESI-PGIMSR & ESIC Hospital & ODC (E.Z.),
Diamond Harbour Road,
Joka,
Kolkata - 700 104.

7. The Assistant Nursing Superintendent,
ESI-PGIMSR & ESIC Hospital & ODC (E.Z.),
Diamond Harbour Road,
Joka,
Kolkata - 700 104.



... Respondents

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. S. Chowdhury, Counsel

O R D E R (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

Being aggrieved at non-receipt of financial upgradation under MACP Scheme, the applicant has approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985, praying for the following relief:-

- "(i) Office Order being No. 412-A-11/20-MACP/2014-Estt./4046 dated 02/04.11.2019 issued by the respondent No. 6 is not tenable in the eye of law and as such the same may be quashed and thereby an order do issue directing the respondent to ignore the bench mark given in the APAR of the applicant for the year 2017-2018 and/or upgrade the same for the purpose of grant of MACP.

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- (ii) An order do issue directing the respondents to include the name of the applicant in Office Order No. 44 of 2020 dated 18.5.2020 and/or Office Order No. 87 of 2019 dated 19.7.2019 issued by the respondent No. 6 and thereby to grant the applicant the 1st financial upgradation in the next grade pay under Modified Assured Career Progression Scheme with effect from 22.1.2019 at an earliest and thereby to grant all the arrears in favour of the applicant along with all consequential benefits along with revision of pay and interest accrued thereon.
- (iii) Grant all consequential benefits.
- (iv) Pass such further or other order or orders."

2. Heard both Ld. Counsel.

3. The submissions of the applicant, as canvassed through her Ld. Counsel is, that the applicant, a Staff Nurse with the respondent authorities had joined service on 22.1.2009 and would legitimately expect to be granted 1st financial upgradation under MACP Scheme with effect from 22.1.2019.

The authorities issued an Office Order on 19.7.2019 in which MACP upgradation was allowed to other similarly situated staff nurses but the applicant was not considered. In response to her application, the authorities informed her that she had not met the requisite bench mark criteria of APAR grading for the purpose of MACP.

The applicant later came to know that for 2017-2018, she had been awarded 5.5 marks with a grade of "good" because of which she had failed to meet the requisite bench mark grade of "very good" to qualify for MACP Scheme.

The applicant would allege that the APAR for 2017-2018 was never communicated to her despite instructions to the contrary, and, accordingly, should be ignored while considering grant of MACP benefits. Further, the requisite bench mark for grant of MACP at the material point of time was "good" and hence, even if the applicant had received a grading of "good", she ought to have been awarded with the MACP benefits w.e.f. January, 2019, according to the rules prevalent at the material point of time. The applicant would further aver that her APAR of 2017 was filled up in a casual manner.

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Moreover, in violation of the mandate of the Hon'ble Apex Court in *Dev Dutt 2008(8) SCC 725 and Abhijit Ghosh Dastidar 2009 (16) SCC 146*, she was not provided with an opportunity to seek review of the APAR of 2017-2018 within given time line, and, hence, being aggrieved, the applicant has approached the Tribunal, praying for the following relief.

4. Upon perusal of records annexed to the original application, it transpires that:

(i) The applicant was not included in the list of staff nurses, who were granted 1st financial upgradation under MACP Scheme in orders dated 19.7.2019, upon which she had represented to the authorities on 24.7.2019 (Annexure A-1 to the O.A.). The authorities by way of response, informed her that she had failed to acquire the requisite bench-mark criteria in her APAR grades to be eligible for MACP.



(ii) Further, the authorities brought out another Office Order dated 18.5.2020 granting financial upgradation to other Staff Nurses, but the applicant did not figure in the said list upon which the applicant expressed her dissatisfaction vide her communication dated 15.6.2020.

(iii) A lawyer's notice dated 1.7.2020 is on record at Annexure A-4 to the O.A., whereby the applicant's grievance has been ventilated with supportive Office Orders and applicable judicial ratio.

It is found, however, that the applicant has not personally represented to the authorities citing rules and judicial ratio in support.

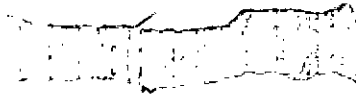
5. Ld. Counsel for the applicant, would, hence, seek liberty to prefer a comprehensive representation to the authorities, to which the Ld. Counsel for the respondents would not object if directions are issued to dispose of the said representation in accordance with law.

6. Accordingly, without entering into the merits of the matter, and, with the consent of the parties, I hereby grant liberty to the applicant to prefer a

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comprehensive representation to the competent respondent authority within 4 weeks from the date of receipt of a copy of this order, and, in the event, such representation is made, the concerned competent respondent authority shall examine the said representation in accordance with law, and, particularly, applicability of the Office Orders and judicial ratio cited therein and issue a speaking and reasoned order on the claim of the applicant, within a period of 12 weeks from the date of receipt of such representation. The reasoned order should be communicated to the applicant forthwith thereafter.

7. With these directions, the O.A. is disposed of. No costs.



(Dr. Nandita Chatterjee)
Administrative Member



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