

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA



No. O.A. 350/00482/2020

Date of order: 17.7.2020

Present

Hon'ble Dr. Nandita Chatterjee, Administrative Member

Putul Bhowmik Majumder,  
Wife of Joyanta Bhowmik,  
Aged about 45 years,  
Working as Staff Nurse at  
ESI-PGIMSR & ESIC Hospital & ODC (EZ)/Joka  
At Male Ortho Ward,  
Residing at 388/C, Upen Banerjee Road,  
Kolkata – 700 060.

.... 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

ORDER (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./4060 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.
- (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 1<sup>st</sup> financial upgradation in the next grade pay under Modified Assured Career Progression Scheme with effect from 26.6.2019 at

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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) Office Order dated 10/15.10.2019 issued by the respondent No. 6 is not tenable in the eye of law and as such the same may be quashed.
- (iv) Grant all consequential benefits.
- (v) Pass such further or other order or orders."

2. Heard both Ld. Counsel.

3. The applicant's submissions, as advocated through her Ld. Counsel is, that the applicant, a Staff Nurse, had joined the respondent authorities on 26.6.2009, and, would legitimately expect that 1<sup>st</sup> financial upgradation under MACP Scheme be granted to her w.e.f. 26.6.2019.

The respondent authorities issued an Office Order dated 19.7.2019 in which similarly situated Staff Nurses were granted financial upgradation under MACP Scheme, and the applicant was informed on 02/04.11.2019 that MACP benefits were denied to her as she had not fulfilled the requisite bench mark criteria in her APAR gradings.



According to the applicant, in her APAR of 2017-2018, which was never communicated to her, she was graded as "good" with 5.6 marks on assessment, and, accordingly, not having achieved the grade of "very good" in the APAR 2017-2018, she was denied the benefits of MACP. The applicant would allege that her APAR for 2017-2018 was never communicated to her despite instructions to the contrary, and hence ought to have been ignored while assessing her suitability to earn MACP upgradation. Also, the reporting authority, who had supervised her office works for less than three months, failed to assess her work appropriately. Further, as the respondent authorities have failed to follow the mandate of the Hon'ble Apex Court in *Dev Dutt 2008(8) SCC 725* and *Abhijit Ghosh Dastidar 2009 (16) SCC 146*, the applicant being aggrieved, has approached the Tribunal for relief.

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

(i) the applicant was not included in the list of incumbents, who was granted 1<sup>st</sup> financial upgradation under MACP Scheme in the orders dated 19.7.2019, upon which she had represented to the authorities on 23.7.2019 (Annexure A-1 to the O.A.). The authorities responded informing her about non-fulfilment of the requisite bench-mark criteria of APAR grading for MACP.

(ii) The applicant, vide her communication at Annexure A-3 to the O.A. had requested the authorities for review of her APAR for 2017-2018, a prayer the authorities rejected on 15.10.2019 primarily on the grounds that the applicant had failed to represent within the stipulated date for seeking such review.

(iii) The authorities had also issued 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 25.6.2020.

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

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

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.

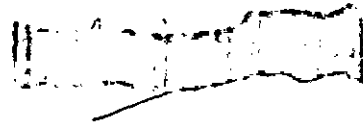
6. Accordingly, without entering into the merits of the matter, and, with the consent of the parties, I hereby grant liberty to the applicant to prefer a comprehensive representation to the competent respondent authority within

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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 same in accordance with law, and, particularly, in the light 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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