

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA



No. O.A. 350/00854/2013

Date of order: 30.03.2021

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. Joydev De,
Son of Sri Sasadhar De,
Aged about 46 years,
Residing at Niharkana Apartment,
5/1, Mondal Para Lane,
Kolkata - 700 090.
2. Jagannath Mondal,
Son of Bholanath Mondal,
Aged about 41 years,
Residing at 21, Tilak Chowdhury Lane,
Flat No. 2B-1st Floor,
Kolkata - 700 030.
3. Saroj Kumar Bandopadhyay,
Son of Late K.D. Bandopadhyay,
Aged about 57 years,
Residing at 96 FFINN, Old Jheel Road Estate,
Cossipore,
Kolkata - 700 002.
4. Dipti Kumar Guha Thakurata,
Son of H.G. Thakurata,
Aged about 55 years,
Residing at F-8, School Road,
Kalishankar Apptt.,
P.O. Sodepur,
Kolkata - 700 110.
5. Swapan Pattanader,
Son of B.C. Pattander,
Aged about 53 years,
Residing at 300 Gopal Lal Thakur Road,
Flat No. 9, 3rd Floor,

A handwritten signature in black ink, appearing to be a stylized 'G' or 'K' followed by a horizontal line.

Baranagar,
Kolkata - 700 036.

6. Ajit Kumar Maiti,
Son of Sri Ganesh Ch. Maiti,
Aged about 46 years,
Residing at Rail Park,
P.O. Morepukur,
Hooghly,
Pin Code - 712250.
7. Biswajit Ghosh,
Son of Sri Damodar Ghosh,
Aged about 34 years,
Residing at
241/10, Old Jheel Road Estate,
Gun & Shell Factory,
Cossipore,
Kolkata - 700 002.
8. Jagadish Chandra Halder,
Son of Late Upendra Nath Halder,
Aged about 59 years,
Residing at 28/76, Santrapara,
Sajbon Road,
P.O. Rahara,
Dist. North 24- Parganas,
Kolkata - 700 018.
9. Mrinal Kanti Rej,
Son of Bisweswar Rej,
Aged about 46 years,
Residing at Ghoshpara East Udayrajpur,
Kolkata - 700 129.
10. Bhaskar Chandra Dhali,
Son of Satish Chandra Dhali,
Aged about 46 years,
Residing at 22B,
Abinash Chandra Banerjee Lane,
Kolkata - 700 010.

11. Debabrata Bose,

hch

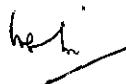
Son of Nanda Lal Bose,
Aged about 38 years,
Residing at Nivedita Pally,
P.O. - Naihati,
Dist. - North 24 - Parganas,
Pin - 743 165.

12. Basanta Kumar Dhali,
Son of Panchanan Dhali,
Aged about 38 years,
Residing at Flat No. 2C-2nd Floor,
25/3C, Incinerator Road,
Gora Bazar,
Kolkata - 700 028.

All are working as Pharmacist and Applicant Nos.
1 to 8 are working in the office of the Gun & Shell Factory,
Cossipore, Kolkata - 700 002 and Applicant No. 9 to 12
are working in the office of the Factory Health Clinic,
Ordnance Factory, Dum Dum, Kolkata - 700 028,
which are under administration & Control of Ordnance
Factory Board, Kolkata - 700 001.

- VERSUS -

1. Union of India,
Through the Secretary,
Ministry of Defence,
Department of Defence Production and Supply,
South Block,
New Delhi - 100 011.
2. The Chairman & D.G.O.F.
Ordnance Factory Board,
10A, S.K. Bose Road,
Kolkata - 700 001.
3. The Director General of Ordnance Factories Board,
10A, S.K. Bose Road,
Kolkata - 700 001.
4. The General Manager,



Gun & Shell Factory,
Cossipore,
Kolkata - 700 002.

5. The General Manager,
Ordnance Factory Board,
Dum Dum,
Kolkata - 700 028.

.... Respondents

For the Applicants : Mr. A. Chakraborty, Counsel
Mr. T.K. Biswas, Counsel

For the Respondents : Mr. S.K. Ghosh, Counsel

ORDER

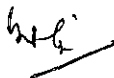
Dr. Nandita Chatterjee, Administrative Member:

The applicants have approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

- "(a) An order directing the respondents to set aside the order dated 19.7.2013 (Annexure A-12) and further directing the respondents to follow the MACP according to this Scheme, applicants are entitled to pay which was enjoying till today i.e. 1st MACP Rs. 4600/-, 2nd MACP Rs. 4800/- and 3rd MACP Rs. 5400/- according to placement basis and placement cannot be treated as promotion, it is purely financial benefits.
- (b) An order directing the respondents to produce the all records of the case which relating to adjudicate this matter;
- (c) Leave may be granted to the applicants to file this application jointly under Rule 4(5)(a) of the CAT (Procedure) Rules, 1987.
- (d) For any other or further order or orders as to this Hon'ble Tribunal may deem fit and proper."

2. Heard both Ld. Counsel, examined pleadings as well as judicial orders furnished by the both Ld. Counsel during hearing.

3. The applicants have prayed for leave to pursue this joint application, and, on being satisfied that the applicants share common interest and are pursuing a



common cause of action, such leave is granted under Rule 4(5)(a) of Central Administrative Tribunal (Procedure) Rules, 1987, subject to payment of individual court fees.

4. The applicants' contentions are that they were initially recruited as Pharmacists (entry grade) in the pay scale equivalent to 6th Central Pay Commission (CPC) pay scale PB-2 + Grade Pay of Rs. 2800/-. Although the cadre, had three grades at the outset, recommendations of 6th CPC had culminated in only two grades, Rs. 2800/- and Rs. 4200/-, both in PB-2.

In accordance with the memorandum dated 18.11.2009 (Annexure A-3 to the O.A.), Pharmacists working in the Ordnance Factory Board, Dum Dum and Cossipore, who were initially placed in the pay band with a grade pay of Rs. 2800/-, were directed to be placed in the Pay Band 2 with Grade Pay of Rs. 4200/- upon completion of two years regular service in the grade, and, vide orders dated 2.6.2010 (Annexure A-5 to the O.A.) the Pharmacists with regular service of two years were awarded with Grade Pay of Rs. 4200/- in Pay Band 2.

That, thereafter, the respondent authorities issued two further orders dated 25.8.2010 and 29.4.2011 (Annexure A-6 to the O.A.) whereby it was stated that such upgradation would be treated as placement and not promotion, and, that such placement should be subject to vigilance clearance.

To distinguish between placement and promotion, Ld. Counsel for the applicant would cite the ratio in (2015) 3 SCC (L&S) 379 in *B. Thirumal v. Ananda Sivakumar and others.* to quote as follows in order to establish that it is settled law that upgradation should not be treated as promotion:-

"23. This Court in *BSNL v. R. Santhakumari Velusamy*, (2011) 9 SCC 510 upon a comprehensive review of the decisions rendered earlier including those rendered in *Union of India vs. S.S. Ranade*, (1995) 4 SCC 462, *Union of India v. V.K. Sirothia*, (2008) 9

hesh

SCC 283 and Lalit Mohan Deb v. Union of India, (1973) 3 SCC 862 formulated specific principles relating to promotion and upgradation in the following words: (Velusamy case, SCC pp. 524-26, para 29)

"29. On a careful analysis of the principles relating to promotion and upgradation in the light of the aforesaid decisions, the following principles emerge:

- (i) Promotion is an advancement in rank or grade or both and is a step towards advancement to a higher position, grade or honour and dignity. Though in the traditional sense promotion refers to advancement to a higher post, in its wider sense, promotion may include an advancement to a higher pay scale without moving to a different post. But the mere fact that both - that is, advancement to a higher position and advancement to a higher pay scale - are described by the common term 'promotion', does not mean that they are the same. The two types of promotion are distinct and have different connotations and consequences.
- (ii) Upgradation merely confers a financial benefit by raising the scale of pay of the post without there being movement from a lower position to a higher position. In an upgradation, the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale."

Ld. Counsel would also cite the decision of the Principal Bench of this Tribunal in O.A. No. 3441 of 2012 in *All India CGHS Employees Association v. Union of India & ors.* to further vindicate that when it is being specifically clarified that the three "promotions" are replaced by three "placements" it cannot be held that the grant of Grade Pay of Rs. 4200/- on non-functional and time-bound basis be treated as a financial upgradation under MACP.

Ld. Counsel would also cite the decision of the Hon'ble High Court of Karnataka in *Writ Petition No. 110551/2017 (S-CAT) in Union of India & ors. v. Indian Railway Pharmacists Association* which had held that, as Pharmacists in Railways enter in the Grade Pay of Rs. 2800/-, on completion of two years, they would automatically be entitled to a Grade Pay of Rs. 4200/-.

According to the applicants, as they were granted the benefit of non-functional grade on completion of two years service, it cannot be said that they were granted any benefit of financial upgradation under the MACP Scheme, and,

heh

after completion of two years of service, on successful completion of probation, they were automatically entitled to a Grade Pay of Rs. 4200/-. Consequently the award of Grade Pay of Rs. 4200/- is to be treated as an upgradation and not as a promotion, and, accordingly, the applicants are entitled to three financial upgradations on completion of 10, 20 and 30 years of service.

5. Ld. Counsel for the respondents, however, would rely on the Office Orders dated 4.7.2012 (Annexure R-1 to the reply), further clarification dated 19.7.2012 (Annexure R-2 to the reply) as well as Office Order dated 19.7.2013 (Annexure R-3 to the reply) wherein it was notified as follows:-

" Sub: Revised Pay structure of the common category post of Pharmacists-
Clarification on MACP

Xxxxxx

The subject matter has been under consideration at OFB & MOD for some time now.

In this content attention is invited towards para 2 of the DOP&T O.M. No. F. 35034/10/2010-Estt.(D) dt. 04.07.2012 communicated vide MOD I.D. No. 45(2)/2011/D(Estt/NG) dt. 19.7.2012 (copies enclosed) which is reproduced below:

"In accordance with the provisions of the Modified Assured Career Progression Scheme (MACPS), every financial upgradations including non-functional grades are to be treated as an offset against one financial upgradation under the Scheme. Accordingly, Non - functional Grade granted to Pharmacists (entry grade with G.P. Rs. 2800/-) to the next GP of Rs. 4200/- in PB-2 on completion of 02 years of service in the GP of Rs. 2800/- in PB-1 has to be treated as 1st MACP."

Further action may be taken accordingly.
PC of A (Fys) has been consulted.

(Dr. B. Rajendran)
DHS

For Director General, Ordnance Factories."

In support, the Ld. Counsel for the respondents would furnish the recent judgment and orders of the Principal Bench dated 20.12.2016 in *O.A. No. 359 of 2013 (All India Ordnance Factories Para Medical Staff Association v. Union of India & ors.)* wherein the applicant No. 1 was an association of Para Medical Officers working in various Ordnance Factory Boards initially recruited as



Pharmacists (entry Grade) in the pay scale equivalent to 6th CPC pay scale PB-2 + Grade Pay of Rs. 2800/-, and, that, as in the case of the instant applicants, the recommendations of the 6th CPC had led to only two grades in the Pharmacist cadre, namely, Rs. 2800/- and Rs. 4200/- respectively both in PB-2. The applicants therein had approached the Tribunal claiming three financial upgradations under MACP by placing reliance on the decisions of this Tribunal in O.A. No. 3441 of 2012 in *All India CGHS Employees Association v. Union of India & ors.*) to claim three MACPs on the grounds that the grant of Grade Pay of Rs. 4200/- upon completion of two years regular service should be treated as an upgradation and not as a promotion.

The Principal Bench of this Tribunal, while adjudicating O.A. No. 359 of 2013 (*All India Ordnance Factories Para Medical Staff Association v. Union of India & ors.*), had discussed the decision of the Tribunal in O.A. No. 2861 of 2013 (*All India Defence Pharmacists' Association & Another v. Union of India & Ors.*), the decision in *All India CGHS Employees Association (supra)*, as well as, the MACP guidelines dated 19.5.2009 of the DOP&T, and had arrived at the following conclusions:-

"7. The MACP guidelines dated 19.5.2009 (Annexure A-4) clearly stipulate that in the matter of MACP, the DOPT is the nodal department who is authorized to give requisite clarifications from time to time. The DoPT in the case of Pharmacists have clearly advised the Ministry of Defence vide O.M. dated 4.7.2012 (page 94 of the paper-book) that upgradation to all Non-Functional Grades (NGSs) are to be treated as MACP upgradation. Joint Consultative Machinery for Central Government Employees wherein it has been stated as under:-

"Subject : Revised pay structure of the common category posts of Pharmacists cadre-clarification - reg.

Reference is invited to this Department's Office Memorandum No. 1/1/2008-IC dated 18th November, 2009 on the above subject. As per para 2 of this O.M., Pharmacist Grade - II and I will be merged and designated as Pharmacist (non-functional Grade) in PB 2 with grade pay of Rs. 4200/- and the grade will be granted to Pharmacist (entry grade) on non-functional basis after 2 years of service in the grade pay of Rs. 2800/-. In view of this, the word 'promotion' in

Woh

the second sentence of para 3 of the O.M. may be read as placement. Such placement will, however, be subject to vigilance clearance."

9. In this O.M. it is clearly stipulated that placement of Pharmacists (entry grade) after completion of two years of service in the grade of Pharmacist with Grade Pay Rs. 4200/- will be subject to vigilance clearance. It is well understood that such clearance are required only in the event of promotions and not otherwise. Looking from this viewpoint also, it is absolute clear that placement of Pharmacists (entry grade) in the Grade Pay of Rs. 4200/- would be treated as first financial upgradation under the MACP Scheme.


10. In the conspectus of the discussions in the foregoing paragraphs, we are of the opinion that the order of this Tribunal in All India Defence Pharmacists Association (supra) (O.A. No. 2861/2013, dated 24.02.2015) is squarely applicable to the instant case. In terms of the said order, this O.A. is dismissed."

The applicants in *All India Ordnance Factories Para Medical Staff Association (supra)* are identically circumstanced as the present applicants. Nothing has been furnished before us to establish that the decision in *All India Ordnance Factories Para Medical Staff Association (supra)* were successfully reversed in any appeal.

6. Hence, in such view of the matter, since the order passed by the Principal Bench binds us, unless reversed on appeal, we are of the opinion that the orders of this Tribunal in *All India Ordnance Factories Para Medical Staff Association (supra)* in O.A. No. 359/2013 is squarely applicable to this case.

7. In terms of such order, this O.A. is dismissed. There will be no orders on costs.


(Dr. Nandita Chatterjee)
Administrative Member


(Bidisha Banerjee)
Judicial Member

SP