

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
KOLKATA

**LIBRARY**

OA. 350/00236/ 2021

Date of order: 08.03.2021

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

JHUMA PASWAN, wife of Baliram Paswan, daughter of  
Shiwlal Paswan, aged about 44 years, working as Staff  
Nurse at ESI-PGIMSR & ESIC Hospital & ODC (E.Z.)/  
Joka at Male Ortho Ward, 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 – 110001.
2. **THE DIRECTOR GENERAL,**  
Employees State Insurance Corporation,  
Hqrs. Office at CIG Marh,  
Panchadeep Bhawan,  
New Delhi – 110002.
3. **THE ADDITIONAL COMMISSIONER &  
REGIONAL DIRECTOR,**  
Employees State Insurance Corporation,  
Regional Office, Grant Lane,  
Kolkata – 700012.
4. **THE MEDICAL SUPERINTENDENT,**  
ESI-PGIMSR & ESIC Hospital & ODC (E.Z.),  
Diamond Harbour Road, Joka,  
Kolkata – 700104.
5. **THE DY. MEDICAL SUPERINTENDENT,**  
ESI-PGIMSR & ESIC Hospital & ODC (E.Z.),  
Diamond Harbour Road, Joka,  
Kolkata – 700104.



6. **THE ASSISTANT DIRECTOR (ADMN),**  
ESI-PGIMSR & ESIC Hospital & ODC (E.Z.),  
Diamond Harbour Road, Joka,  
Kolkata – 700104.

7. **THE ASSISTANT NURSING SUPERINTENDENT,**  
ESI-PGIMSR & ESIC Hospital & ODC (E.Z.),  
Diamond Harbour Road, Joka,  
Kolkata – 700104.

.....Respondents.

For the Applicant : Mr. Arpa Chakraborty, Counsel  
Ms. P. Mondal, Counsel

For the Respondents : Mr. S. Chowdhury, Counsel

### ORDER (Oral)

Per Ms. Bidisha Banerjee, JM:

Heard Id. Counsel for both sides.



2. The applicant, being aggrieved by the Office Order dated 02/04.11.2019 issued by respondent No.6 and subsequent Order dated 03.11.2020 issued by the respondent No. 4 rejecting her prayer for grant of 1<sup>st</sup> Financial Upgradation under MACP, has preferred this O.A. to seek the following relief:

*"8(i) Office order being No. 412-T-11/11/157/(OA. No. 481 of 2020) /2020 dated 03.11.2020 issued by the respondent no. 4 and 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 respondents to ignore the benchmark 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 18.05.2020 and/or office Order No. 87 of 2019 dated 19.07.2019 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 22.01.2019 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."*

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3. Ld. Counsel for the applicant submits that the applicant joined the service as Staff Nurse on 22.01.2009 and, on completion of 10 years of continuous service, she was eligible for 1<sup>st</sup> Financial Upgradation under MACP. On 19.07.2019, an Office Order was issued publishing the list of eligible employees for being conferred with 1<sup>st</sup> MACP but surprisingly the applicant was left out. On her representation dated 24.07.2019, she was intimated, vide order dated 02/04/2019, that her case was not recommended by the Committee due to grading below the benchmark in APAR considered for MACP. Ld. Counsel for the applicant would submit that the applicant was never communicated with any adverse APAR of 2017-18, consequently depriving her of any scope of representation.



While the matter stood thus, another Office Order dated 18.05.2020 was issued granting MACP benefit to other employees, however, once again the applicant's name did not find place in the said list.

Being aggrieved, she preferred O.A. No. 481/2020, which was disposed of by this Tribunal vide order dated 17.07.2020 granting liberty to the applicant to prefer comprehensive representation before competent authority. Her representation has been rejected vide order dated 03.11.2020 by the Medical Superintendent, ESIC Hospital, Joka. Hence, the present O.A.

4. At hearing, Ld. Counsel for the applicant would submit that the applicant had relied upon the judgments passed by various Tribunals and Hon'ble Apex Court as well DoPT OM of 2010 and 2012, which have not been considered while rejecting the case of the applicant.

That, Hon'ble Apex Court in *Abhijit Ghosh Dastidar Vs. UOI & Ors.*, (2010) 1 SCC (L&S) 959, has observed that any adverse grading is required to be communicated to the concerned employee as it has civil consequences and, that, non-communication of adverse ACR is arbitrary and violative of Article 14.

Further, relying upon the orders passed by the Bangalore Bench of the Tribunal in O.A. 727/2016 on 20.01.2017 and the Kolkata Bench of the Tribunal in O.A. 1875/2015, Ld. Counsel for the applicant would argue that the criteria for selection cannot be changed subsequently and that the last five years' APAR should be taken into consideration for granting her 1<sup>st</sup> MACP.

Ld. Counsel by filing copies of the DoPT OM dated 01.11.2010 and 04.10.2012 would submit that the benchmark for granting her the 1<sup>st</sup> MACP is "good" and not "very good" and that the applicant had a "good" grading in the concerned APARs.



5. Ld. Counsel for respondents would argue to justify the respondents' action.

6. We gave our anxious consideration to the rival contentions and the implication of the DOPT OM as well as the decisions cited. Since the specific plea of the applicant, at hearing, is that the decisions relied upon by the applicant as well as the relevant DoPT O.M. dated 01.11.2010 and 04.10.2012 have not been taken into account while considering the representation of the applicant, we dispose of this O.A. directing the appropriate competent authority to consider the representation of the applicant afresh applying his judicious mind to the facts, law, decisions, administrative instructions referred to *supra*, and pass appropriate order within a further period of four weeks from the date of receipt of a copy of this order.

In the event the applicant is found entitled relief as sought for shall be extended within a reasonable period in accordance with law.

Thus, the OA would stand disposed of. No costs.

**Nandita Chatterjee)**  
**Member (A)**  
pd

**(Bidisha Banerjee)**  
**Member (J)**

