

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

LIBRARY

OA. 350/69/2021

Date of order: 27.01.2021

Present

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

Probbhash Rajak, son of Hari Rajak, aged about 48 years, working as Plaster Assistant in ESIC Hospital and ODC(EZ), Joka, Kolkata, residing at ESIC Hospital Complex, Q. No. B-2/4, P.O. Joka, Diamond Harbour Road, P.S. Thakurpukur, Kolkata- 700 104.

.....Applicant.

-versus-

1. Union of India through the Secretary to the Govt. of India, Ministry of Labour & Employment, Shram Shakti Bhawan, Rafi Marg, New Delhi- 110001.
2. The Director General, Employees State Insurance Corporation, Panchdeep Bhawan, CIG Marg, New Delhi-110002.
3. The Medical Commissioner, Employees State Insurance Corporation, Panchdeep Bhawan, CIG Marg, New Delhi- 110002.
4. The Financial Commissioner, Employees State Insurance Corporation, Panchdeep Bhawan, CIG Marg, New Delhi- 110002.
5. The Medical Superintendent, ESIC Hospital and ODC (EZ) Joka, Kolkata- 700104.

.....Respondents.

For the Applicant

: Mr. B. Bhushan, Counsel
Ms. K. Chakraborty, Counsel

For the Respondents

: Mr. S.C. Prasad, Counsel



ORDER (Oral)

Per Ms. Bidisha Banerjee, JM:

This application has been preferred to seek the following reliefs:

"8(a) To quash and/or set aside the impugned vide office letter No. 412-A-11/20/ACP-MACP/07-Estt. Office order No. 135 of 2020 dated 14.12.2020 passed by the respondents.

(b) Directed to the respondents not to give effect the reduction of the pay scale of Rs. 2400/- and Rs. 2800/- and accordingly mandatory direction upon respondents to not reduction the pay which the applicant are getting by the order of competent authority.

(c) An order directing the respondents to produce/cause production of all relevant records;

(d) To pass such other order or orders, direction or directions as your Lordships may deem fit and proper."



2. Heard both the Id. Counsels.

3. It transpired at hearing that the applicant was granted the financial upgradation of 2nd MACP in Grade Pay of Rs. 2800/- in PB-I with effect from 17.05.2015 on completion of 20 years of service in terms of the order of Principal Bench in OA.3227/2011 decided on 19.12.2013 and DOPT OM dated 19.05.2009, Head Quarter OM dated 30.11.2009. The said order of Principal Bench is under challenge before the Hon'ble High Court at Delhi and the issue is pending before the said higher forum.

4. Ld. Counsel for applicant would draw our attention to the Office Order No. 135 of 2020 dated 14.12.2020, impugned in the present OA, whereby and whereunder the respondents have cancelled the earlier ACP/MACP orders in respect of some officials including the present applicant and instead granted ^{him} ~~them~~ 1st MACP in Grade Pay of Rs. 2400/- in PB-I with effect from 02.01.2019, to his prejudice. The order further reads that :

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"The earlier ACP/MACP orders in respect of above officials, which were issued earlier by this office, may be treated cancelled."

5. Ld. Counsel alleges that while the issue is pending consideration before a higher forum, the authorities ought not to have issued any order to take away the benefits bestowed on him in terms of the order of Principal Bench treating the earlier benefit as provisional.

6. Ld. Counsel for respondents produced instructions dated 19.01.2021, in lieu of a reply which is taken on record. The extract whereof is as under :

"..... it is to state that the benefit of higher pay scale of Rs. 4000-6000/- and its revised pay scale of PB-1 +GP Rs. 2400/- have been granted to the applicants only on provisional basis to comply with the order of the Hon'ble CAT, Calcutta Bench and CAT, Principal Bench, Delhi but subject to the outcome of the Writ Petition No. 18 of 2015 filed before the Hon'ble High Court of Delhi which is still pending.

Further the ESIC Hqrs. Office vide its 3(Three) letters being No. Part-Z-11/11/2/Misc./2016/Med. IV dated 05.03.2018, dated 06.05.2019 and dated 10.06.2019 clearly instructed all the Medical Superintendent/Dean of Medical College and Hospital that benefit of Higher Grade Pay of Rs. 2400/- has been granted on provisional basis. This grant is further subject to the final outcome of the Writ Petition No. 18 of 2015 pending at Delhi High Court, challenging the aforesaid Orders of the CAT. It is also directed that the same benefit not to be given in the promotional post or similarly placed incumbents in the cadres.

The Official cannot draw an analogy on their own and grant higher scale to the petitioners on their promotion. Their pay scale in the promotion posts will continue to be guided by the extent provisions of the RR of the corresponding in higher post and will draw Grade Pay of Rs. 2400/- and not Rs. 2800/-. In case the pay has been fixed otherwise due to an error of commission, individual responsibility may be fixed and suitable disciplinary action may be taken. Further, excess payment made due to wrong fixation, if any, may also be covered immediately.

The ESIC Hqrs, office vide it letter bearing No. Part-Z-11/11/2/Misc./2016/Med.IV dated 06.05.2019 also clarified the above instructions are avail valid for MACP Scheme. While granting the MACP, pay level/grade pay admissible as per the RR of concerned post shall only be considered. Pay level/grade pay granted on provisional basis in pursuance of CAT or courts order are no to be considered for grant of MACP.

It may be ensured that the MACPs are allowed as detailed above only. Any deviation from said instructions will be taken seriously and may attract disciplinary actions against erring officers/officials. "



7. Irrefutably and admittedly an issue that has bearing the present case, is pending before the Hon'ble High Court at Delhi but the respondents in the meantime, without waiting for a decision on the pending issue, have decided to take away the benefits that stand already bestowed to the applicant. Such an action of divesting him of his vested right will have civil consequences and would cause pecuniary damages to the applicant. Hence, we quash the impugned order and permit the respondents to act in accordance with law, as and when the issue is decided by the Hon'ble High Court at Delhi.

8. The present OA stands disposed of accordingly. No costs.



9. Id. Counsel for respondents to communicate the gist of the order so that the pay of the applicant is not affected this month.

10. Urgent certified copy of this order be handed over to the Id. Counsel for both sides.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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