

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

**Original Application No. 383 Of 2012 A.W.
Original Application No. 425 of 2012**

Order Reserved on 28.4.2014

Order Pronounced on 23.05.2014

HON'BLE MR. NAVNEET KUMAR MEMBER (J)

Original Application No. 383 of 2012

V. N. Mishra, aged about 58 years, S/o Late Shri M. P. Mishra, R/o B-60, Keshav Vihar, Kalyanpur, Lucknow.

Applicant

By Advocate Sri Praveen Kumar.

Versus

1. Union of India through the Secretary, Ministry of Health & FW, Nirman Bhawan, New Delhi.
2. The Additional Secretary & DG, CGHS, Directorate General Health Services, New Delhi.
3. The Director, CGHS, Directorate General Health Services, Nirman Bhawan, New Delhi.
4. The Deputy Director Administration (MSZ), CGHS, Directorate General health Services, New Delhi.
5. The Additional Director, Central Government Health Scheme, B0114/115, Jib/ndal Plaza, Vibhuti Khand, Gomti Nagar, Lucknow.

Respondents

By Advocate Sri Rajendra Singh for Shri R. Mishra.

Original Application No. 425 of 2012

1. Uma Kant Bajpai, aged about 56 years, son of Late Prem Shankar Bajpai Resident of Sector 13/582, Indira Nagar Lucknow.
2. Ram Kumar, aged about 56 years, son of Sri Chhotey Lal, resident of Villate Launga Khera, Post Office Kharika, Telibagh), Lucknow.
3. Dilip Kumar Gupta aged about 56 years, son of Late T. N. Gupta, Resident of Sector 21/255, Indira Nagar, Lucknow.
4. Mohan Lal Vimal, aged about 55 years, son of Late Ram Charan, Resident of ES-1/150 Sector-A, Sitapur Road Yojana-Sector-Q, Aliganj Housing Scheme Lucknow.

Applicants

By Advocate Sri S. Lavania.

Versus

1. Union of India through the Secretary to Government, Ministry of Personnel, Public Grievances and Pensions, Department of

Personnel & Training, Central Civil Secretariat, (North Block), New Delhi.

2. Director General, Government of India, Ministry of Health and family welfare, Central Government Health Services (CGHS-II Section), NIRMAN Bhawan, New Delhi.
3. Additional Director, Government of India, Ministry of Health and Family welfare Central Government Health Scheme B-114, 115, Vibhuti Khand, Gomti Nagar, Lucknow.

Respondents

By Advocate Sri Rajendra Singh.

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:

- (i) To quash the impugned order dated 28.8.2012 and order dated 4.9.2012 and order dated 12.7.2012, contained as Annexure No. A-1, A-2 and A-3 to this O.A. with all consequential benefits.
- (ii) To restrain the respondents from reducing the pay/Grade Pay and further from imposing recovery in pursuance of the impugned orders, and recovered amount, if any may be refunded.
- (iii) Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.
- (iv) Cost of the present case may also be awarded as the applicant has unnecessarily been dragged into litigation."

2. In O.A. 425/2012 wherein the applicants prayed for setting aside part of O.M. dated 19.5.2009 as well as the Government Order No. G.12011/1/2010-CGHS II dated 19.9.12 as well as other consequential orders and in O.A. No. 383 of 12, the applicant has prayed for quashing the order dated 4.9.2012 and order dated 12.7.2012 and also prayed for issuing a direction upon the respondents from restraining them from reducing the pay/grade pay and further from imposing recovery in pursuance of the impugned orders.

3. The brief facts of the case are that the applicants were initially appointed as Pharmacists Grade-I by the competent authority and they were provided the pay scale of Rs. 4500-7000/- before the 6th CPC and after grant of ACP Scheme, the pay scale of Rs. 5500-9000/- on 12 years of service and pay scale of Rs. 6500-10500 after 24 years of service. The

DOP&T issued an office memorandum regarding clarifications on the subject Assured Career Progression Scheme (ACP) date 18.7.2001 inter alia to clarify on the issue as to whether placement/appointment in the higher scales of pay based on the recommendations of the pay commissions or committee set up to rationalize the cadres be reckoned as promotion/up gradation or not. Subsequently, when the 6th Pay Commission report was approved, the Government has referred the matter relating to the demands made with respect to the pay scales of certain common category posts including that of Pharmacists to a Fast Track Committee and one of the items referred to the FTC related to the pay scales of common category posts of Pharmacists. The recommendations made by the FTC were considered by the Central Government and the recommendations of the FTC were accepted with respect to the pay scales of common category posts of Pharmacists and w.e.f. 1.1.2006 and the following pay structure was approved;:-

- (1.) Pharmacists 4500-7000 Grade pay of 2800 in PB-I.
- (2) Pharmacists Grade II 5000-8000 4200 in PB-II Pharmacists-II & Pharmacists-I will be merged and re -designated a pharmacists (Non functional grade)

4. Accordingly office memorandum dated 18.11.2009 on the subject of implementation of recommendations of FTC with the aforesaid pay structure of Pharmacists cadre was issued.

5. The learned counsel appearing on behalf of the respondents have stated that grant of Rs. 4200/- on completion of 12 years in the Grade Pay of Rs. 2800/- in respect of Pharmacists will be offset against 1st financial up-gradation under MACP scheme, therefore, they are entitled for Grade Pay of Rs. 4600/- and 4800/- as 2nd and 3rd MACP respectively.

6. The learned counsel appearing on behalf of the applicant filed their rejoinder, and through rejoinder mostly the averments made in the O.A. are reiterated.

7. Heard the learned counsel for the parties and perused the record.



8. While arguing the case, the learned counsel for the applicant has relied upon a decision of the coordinate bench of this Tribunal passed by the Principal Bench of Central Administrative Tribunal in O.A. No. 3441/2012 and indicated that the issue involved in the present O.A. is the same as decided by the Principal Bench of the Tribunal. Apart from this, it is also seen that vide O.M. Dated 2.6.2010, a clarification was issued to the earlier order dated 18.11.2009 to the effect that the word promotion in the second sentence of para 3 of the OM may be read as placement. Relevant portion of the said O.M. reads as follows:-

“Consequently, upon the implementation of the above pay structure, promotion from Pharmacist (Entry Grade) to the next higher grade of Pharmacist (Non-Functional Grade) having grade pay of Rs. 4200/- will be delinked from vacancies and will become non-functional and time bound. In the case of Organizations like the Ordnance Factory Board, where all the Pharmacists posts are presently in the grade pay of Rs. 2800 in the pay band PB-I, the implementation of the above pay structure will result in the introduction of the new Non-Functional Grade having grade pay of Rs. 4200 in the pay band PB-2.”

9. It is thus noticed that according to the government's decision communicated vide O.M dated 18.11.2009, the revised pay structure to be applied may read as placement in place of Promotion. While arguing the case, the learned counsel appearing on behalf of the applicant has also produced the decision of this Tribunal in O.A. No. 518/2005. Consequently, the Government of India Ministry of Finance had issued a clarification on 6th CPC replacement pay to the pre-revised scale of pay of Rs. 8000-275-13,500 granted on account of financial up-gradation under the ACP Scheme vide its letter dated 20.5.2011 of the written submission. Not only this, the learned counsel for the applicant has also relied upon the decision of the Ernakulam Bench of the Tribunal in O.A. No. 268/2007 and while deciding the O.A. the Ernakulam Bench held that “when posts are placed in higher scale without a change in responsibilities and duties, then such placement should not be treated as promotion/up-gradation.” Finally, the coordinate bench of this Tribunal at Principal Bench allowed the O.A. No. 3221/2012. Under such a

circumstances, I have no reason to defer with the decision rendered by the coordinate bench of this Tribunal at Principal Bench.

10. Accordingly, the O.As are allowed. The impugned orders are quashed. No order as to costs.

Navneet Kumar
(Navneet Kumar)
Member (J)

vidya