

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

OA 98/2015  
MA 1366/2015

Order reserved on: 18.11.2015  
Order pronounced on: 26.11.2015

**Hon'ble Mr. V. Ajay Kumar, Member (J)**  
**Hon'ble Mr. P.K. Basu, Member (A)**

Som Prakash S/o Late Shri Jia Lal  
Age 59 D/Pharmacist  
Pharmacist  
DGD Madangir  
New Delhi  
R/o 16 A-48, DDA Flats  
C.R. Park, New Delhi-19

... Applicant

(Through Shri Padma Kumar S. and Shri Krishna Kumar Mishra,  
Advocates)

Versus

1. Govt. of NCT Delhi  
Through the Chief Secretary  
Delhi Secretariat  
IP Estate, New Delhi
2. Secretary,  
Health & Family Welfare,  
Department of Health & Family Welfare  
Govt. of NCT Delhi  
9<sup>th</sup> Level, A Wing  
IP Extension, Delhi Secretariat  
New Delhi-110002
3. Secretary  
Department of Finance  
Govt. of NCT Delhi  
4<sup>th</sup> Level, A Wing  
Delhi Secretariat, I.P. Estate  
New Delhi
4. Director  
Directorate of Health Service  
Govt. of NCT of Delhi  
Karkardooma  
Delhi-110032

... Respondents

(Through Shri Anmol Pandita for Shri Vijay Pandita, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant is a Pharmacist in the Directorate of Health Service, Government of National Capital Territory of Delhi (GNCTD). He is aggrieved by the denial of third financial upgradation under the Modified Assured Career Progression Scheme (MACPS) with the Grade Pay of Rs.5400/-, which was originally granted but later withdrawn without even a Show Cause Notice. The respondents have also issued an order of recovery of Rs.2,67,998/- either from his salary or from his pension.

2. The learned counsel for the applicant states that the issue has already been decided by this Tribunal in OA 3441/2012, **All India CGHS Employees Association and others Vs. Union of India and others**, where the Tribunal has rejected the contention of the respondents that upgradation of Grade Pay of Rs.4200/- from Rs.2800/- on non-functional basis under Fast Track Committee recommendations on completion of two years of service, should be treated as financial upgradation under MACPS. The Tribunal directed the respondents to grant applicants in the aforesaid OA 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> MACP in the Grade Pay of Rs. 4600/-, 4800/- and 5400/- respectively. In this regard, the applicants have placed reliance on the following orders/ judgments as well:

- (i) Order dated 6.09.2012 in OA No.870/2011 passed by the Ernakulam Bench of the Central Administrative Tribunal (CAT) – The issue there was whether the grant of non-functional scale of Rs.8000-13500 would affect the grant of ACP/MACP. The Tribunal held that since the non-functional scale was neither by way of promotion nor by way of ACP/MACP, the grant of non-functional scale will not have any effect on normal entitlement of ACP/MACP.
- (ii) Judgment of the Hon'ble High Court of Kerala at Ernakulam in OP (CAT) No.919 of 2013 – Having examined the order of the CAT (Ernakulam) Bench in OA 870/2011, the Hon'ble High Court affirmed the order of the Tribunal.
- (iii) Order dated 7.11.2014 in OA No.804/2013 passed by the Principal Bench of the CAT – The issue here again was whether non-functional scale of Rs.8000-13500 granted to Central Secretariat Stenographers Service could be taken against them to deny benefit of ACP/ MACP. The Tribunal decided the issue in the negative.
- (iv) Order dated 12.08.2013 in OA 713/2012 in **All India Association of Statistical Investigators and others Vs. UOI** – The issue in this case was whether the non-functional scales of Rs.5500-9000 and Rs.7450-11500 should be counted for

the purpose of granting ACP. The Tribunal decided the issue in the negative.

- (v) Order dated 27.09.2000 in OA No.818/2000 passed by the CAT, Principal Bench in **F.C. Jain Vs. UOI** – The issue in this case was whether non-functional scale of Rs.7500-12000 granted to 50% of the cadre strength could disentitled them to ACP. The Tribunal answered in the negative.
- (vi) Judgment of the Hon'ble High Court in UOI Vs. F.C. Jain, which upheld the order of this Tribunal.
- (vii) Judgment dated 19.09.2003 of the Hon'ble Supreme Court in SLP No.289/2003, dismissing the SLP filed by the UOI
- (viii) Judgment dated 15.02.2008 of the Hon'ble Delhi High Court in **Grade-I DASS Officers Association Vs. Secretariat, Government of India and others**, 148 (2008) Delhi Law Times 342 (DB)
- (ix) Judgment of the Hon'ble Supreme Court dated 27.11.2012 in **N.R. Parmar Vs. UOI** wherein it was laid down that a clarification cannot be in conflict with the instrument sought to be explained.

Further reliance was placed on **State of Punjab and others Vs. Rafiq Masih (White Washer) etc.**, 2014 (8) SCALE 613 stating that no recovery can be made in the light of this judgment.

3. The learned counsel for the respondents relies on para 8 of MACP guidelines, which read as follows:

"8. Promotions earned in the post carrying same grade pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of MACPS.

8.1 Consequent upon the implementation of Sixth CPC's recommendations, grade pay of Rs.5400/- is now in two pay bands viz., PB-2 and PB-3. The grade pay of Rs.5400 in PB-2 and Rs.5400 in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under MACP Scheme."

4. Further, he drew our attention to letter dated 20.09.2013 (Annexure R1 colly) on the subject of clarification regarding implementation of Fast Track Committee recommendation in respect of common category of Pharmacist, which reads as follows:

"Sub: Clarification regarding implementation of Fast Track Committee recommendation in r/o Common category of Pharmacist.

Sir/Madam,

This has reference to the subject cited above. In this regard, I am directed to inform you that the Department of Personnel & Training, Establishment (D), Govt. of India vide Dy. No.104473/12/CR dated 17.04.2013 has clarified that "4. In terms of the provisions contained vide para 8.1 of Annexure – I of the MACPS dated 19.05.2009, every financial upgradation including non-functional grades granted have to be treated as an offset against one financial upgradation under the Scheme. Accordingly, it may be clarified that Pharmacists with entry Rs.2800/- in PB-I and in receipt of NF grade in the GP Rs.4200/- on completion of 2 years of service, is eligible for 2<sup>nd</sup> and 3<sup>rd</sup> financial upgradation under MACPS in the GPs Rs.4600/- and Rs.4800/- only."

In view of above, you are therefore, requested to take appropriate action in light of above."

to establish the fact that the applicant is entitled to 2<sup>nd</sup> and 3<sup>rd</sup> financial upgradations under MACPS in the Grade Pay Rs.4600/- and Rs.4800/- only.

5. We have heard the learned counsel for the parties and gone through the pleadings available on record.

6. The question before us is whether non-functional grade of Rs.4200/- to Pharmacists has any bearing on their getting upgradation under MACPS.

7. The answer lies, in our opinion, in the very first paragraph of MACPS, which reads as follows:

"1. There shall be three financial upgradations under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years' service respectively. Financial upgradation under the Scheme will be admissible **whenever a person has spent 10 years continuously in the same grade-pay.**"

8. In our view, no other clarification is required because in the case of the applicant, he is not entitled to first 10 year upgradation as his Grade Pay has changed from Rs.2800/- to Rs.4200/- within two years. As such, the applicant is eligible only to second and third upgradation in the Grade Pay of Rs.4600/- and Rs.4800/- respectively. In our opinion, para 8.1 of MACPS is not relevant. What is relevant is para 1, which is quoted above.

9. In view of this clear position, we hold that there is no irregularity in the government's decision to grant second and third upgradation in the Grade Pay of Rs.4600 and Rs.4800/-. As regards the order of this Tribunal in All India CGHS Employees Association (supra), we find that the learned Members of the Bench have not considered para 1 of MACP guidelines and, therefore, in the light of the judgments of the Hon'ble Supreme Court in **U.O.I. and another Vs. Manik Lal Banerjee**, (2006) 9 SCC 643 and **V. Krishna Rao Vs. Nikhil Super Speciality Hospital and another**, (2010) 5 SCC 513, this order of the Tribunal is *per incuriam*.

10. As regards the decision in OA 870/2011 (supra), we notice that the issue and cadre involved therein was completely different. Therefore, this cannot be taken as a precedent. Similar is the position with regard to OA 804/2013 (supra) as the facts of that case are again completely different. The other cases cited by the applicant also belong to different cadres and issue therein is also different. In fact, in the case of Grade-I DASS Officers Association (supra), the matter pertained to ACP Scheme. We also think that the ratio laid in N.R. Parmar (supra) is not applicable here as the MACP guidelines itself, in para 1, makes it clear that the applicant is not entitled to three upgradations under MACPS, as explained above.

11. As regards applicability of Rafiq Masih (supra), since the applicant is stated to have retired on 31.05.2015, clause (ii) of para 12 of the judgment of the Hon'ble Supreme Court would

apply, which basically states that recovery from retired employees or employees due to retire within one year would be impermissible. Therefore, the respondents are directed not to recover any amount from the applicant, who has since retired and in case they have recovered some amount that should be refunded within 15 days.

12. With the above directions, the OA is disposed of. No costs.

( P.K. Basu )  
Member (A)

( V. Ajay Kumar )  
Member (J)

/dkm/