

**Central Administrative Tribunal  
Principal Bench**

**OA No. 554/2015**

Order reserved: 01.03.2016

Order pronounced: 09.03.2016

**Hon'ble Mr. A.K. Bhardwaj, Member (J)  
Hon'ble Dr. B.K. Sinha, Member (A)**

Ms. Gurmit Srivastava,  
Retd. Nurse (NR)  
Age 61 years  
W/o Sh. Narendra Nath,  
Flat 101, Shiv Apartments,  
Plot 475, Pochanpur, Sector 23, Dwarka  
New Delhi-110075

-Applicant

(By Advocate: Ms. Tamali Wad)

Versus

1. Union of India,  
Through Secretary,  
Ministry of Communications & IT,  
Department of Posts, Sanchar Bhawan,  
20, Ashoka Road, New Delhi
2. Department of Personnel & Training,  
Through Secretary,  
Ministry of Personnel, Public Grievances & Pension,  
North Block, New Delhi
3. Chief Post Master General,  
Department of Post, Govt. of India,  
UP Circle, Lucknow-226001

-Respondents

(By Advocate: Mr. R.K. Sharma)

**ORDER**

**By Dr. B.K. Sinha, Member (A):**

In the instant Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant is aggrieved with the order of the respondent no.3 dated

11.03.2014 granting her 3<sup>rd</sup> financial upgradation under Modified Assured Career Progression Scheme (MACPS) in Grade Pay of Rs. 5400/- in Pay Band Rs.15600-39100 (PB-3) w.e.f. 17.07.2011, instead of Grade Pay of Rs. 6600/- in PB-3. The applicant is further aggrieved with failure on the part of the respondents not to respond adequately to her representation and proceeding on the erroneous premise that she was to have been given her 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> financial upgradations under MACP Scheme 2008 in Grade Pay of Rs. 4800/- (PH H2), Rs.5400/- (PB2) and Rs. 5400/- (PB3) respectively, instead of first allowing her Grade Pay Rs. 5400/- (PB3), which is the 6<sup>th</sup> CPC replacement scale for Rs. Rs.6500-10500/- (pre-revised) in respect of Nursing personnel and then granting her the 3<sup>rd</sup> MACP in Grade Pay Rs. 6600/-.

2. The applicant has prayed for the following reliefs:-

- “(a) To summon the records pertaining to revision of the pay of the applicant in light of the 5<sup>th</sup> CPC and 6<sup>th</sup> CPC report as well as financial upgradations granted to her till date.
- (b) To quash and set aside office order dated 11.03.2014 issued by the Respondent No.3 whereby the applicant has been wrongly granted her 3<sup>rd</sup> MACP in GP Rs.5400 in PB-3 w.e.f. 17.07.2011.
- (c) On granting prayer (b) above, to direct the Respondents to revise the pay of the applicant w.e.f. 1.1.2006 in PB-3 Grade Pay Rs. 5400 in the pay scale of Rs. 15600-39100 along with all

consequential benefits as per law including arrears of salary.

- (d) On granting prayers (b) & (c) above to direct the respondents to grant to the Applicant her 3<sup>rd</sup> MACP w.e.f. 17.07.2011 in GP Rs. 6600/- in PB3 (Rs.15600-39100) along with all consequential benefits as per law including arrears of salary.
- (e) On granting prayers (b), (c) & (d) above to direct the Respondents to revise her pension and gratuity and to grant arrears thereof w.e.f. 31.04.2013 viz the applicant's date of superannuation.
- (f) Pass any other and further order which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

3. The case of the applicant, in very brief, is that she joined service with respondent no.3 as Nurse (Non Resident) on 17.07.1981. This post is a single post with no promotional avenues. This post in the 5<sup>th</sup> Pay Commission period carried a pay scale of Rs. 5000-8000/-. She was thereafter granted 1<sup>st</sup> and 2<sup>nd</sup> ACPs in the pay scales of Rs. 5500-9000/- and Rs. 6500-10500/- respectively as per the promotional hierarchy of Staff Nurse working in hospital under Central Government. After the acceptance of the recommendations of the 6<sup>th</sup> Pay Commission, the applicant was granted the 3<sup>rd</sup> financial upgradation under MACPS in the scale of Rs. 15600-39100/- + Rs. 5400/- (GP) in PB-3. She subsequently retired on 30.04.2013 and her pension had been fixed in this scale. It is the contention of the applicant that the recommendations for Nursing & Paramedic Staff contained in Section II of Part B of the 1<sup>st</sup>

Schedule to CCS (RP) rules, 2008 have been extended to all the Nursing and Paramedic Staff under Central Government including those working in Postal dispensaries under the Department of Posts. No separate notification or order has been issued by the Department of Posts for its dispensary staff. This fact is also manifested from the reply obtained under RTI Act on 01.04.2009. Under terms of these CCS (RP) Rules, 2008, general scales of pay in pre-revised scale of Rs. 5000-8000/-, Rs. 5500-9000/- and Rs. 6500-10500 scales were merged and were placed in the common Grade Pay of Rs. 4200 in PB-2. The Government of India vide OM dated 13.11.2009 while continuing the general pre-revised pay scales of Rs. 5000-8000 and Rs. 5500-9000 in a single Grade Pay of Rs. 4200/PB-2 were upgraded to Rs. 6500-10500 (pre-revised) and merged it with Rs. 7450-11500 in a single Grade Pay of Rs. 4600/PB-4. However, this is not so in case of the Nursing & Paramedic Staff for whom the pre-revised scale of RS. 5500-9000 was upgraded and placed in GP Rs. 4800 –n PB-2 instead of GP Rs. 4200/-. Likewise those in pre-revised scale of Rs. 6500-10500 were upgraded to GP Rs. 5400 in PB-3 instead of GP Rs. 4600 in PB-2. It is the case of the applicant that this upgradation and departure in the revised pay scales for the Nursing personnel was a result of

a conscious decision of the Government of India in their favour in view of their nature of duties. Further, it was also decided that in the case of all employees granted financial upgradations under ACPS till 1.1.2006, their revised pay will be fixed with reference to the pay scales granted to them thereunder. All the Nursing Staff in Central Government hospitals, who had been granted the 1<sup>st</sup> and 2<sup>nd</sup> ACPs before 31.08.2008 in the pay scale of Rs. 5500-9000 and Rs. 6500-10500 were re-fixed in the replacement scale in Grade Pay Rs. 4800 (PB-2) Rs. 9300-34800 and the GP 5400 (PB-3) Rs. 15600-39100 respectively made effective from 1.1.2006 vide Government of India notification dated 29.08.2008. The financial upgradation in the promotional hierarchy under the ACPS has also been allowed in the revised pay structure during 1.1.2006 and 31.01.2008, which is also evident from Paras 6 and 6.1 of Annexure A/1 of MACPS issued by DOP&T vide OM dated 19.05.2009.

5. The applicant further relies upon the DOPT OM dated 09.09.2010 providing that new MACPS which replaces ACPS of 1999 has come into existence w.e.f. 01.09.2008. However, as the pay structure has changed from 1.1.2006, the previous ACPS would be applicable in the new pay structure adopted w.e.f. 1.1.2006.

6. The applicant further submits that for the reasons best known to the respondents, the pay of the applicant was wrongly fixed in the Grade Pay of Rs. 4600/- w.e.f. 1.1.2006 ignoring the decision of the respondents that in the case of all the employees, who had been granted financial upgradations under ACPS till 1.1.2006, their revised pay will have to be fixed with reference to the pay scales granted to them under ACPS. In the second place, the applicant further relies upon the practices followed in Dr. Ram Manohar Lohia Hospital where a Nursing staff, who had been granted 2<sup>nd</sup> ACP financial upgradation in the pre-revised scale of Rs. 6500-10500 w.e.f. 01.02.2007 on completion of 24 years of service, has been granted GP Rs. 5400 in PB-3 in the pay scale of Rs. 15600-39100 and a similarly placed one Saroj Kath Choudhary - Staff Nurse of CGHS, Lucknow.

7. The applicant states that she filed several representations, as result of which, she was granted the Grade Pay of Rs. 5400/- w.e.f. 1.1.2006, but wrongly re-fixed her pay in PB-2 in the pay sale of Rs. 9300-34800, instead of PB-3 in the pay scale of Rs. 15600-39100. Thereafter the applicant made several representations against this and finally one year after her retirement, the respondents passed the impugned order dated 11.03.2014

granting her 3<sup>rd</sup> financial upgradation under MACP Scheme w.e.f. 17.07.2011 in the pay scale of Rs. 15600-39100/- in PB-3 in Grade Pay of Rs. 5400/-. The applicant states that she had learnt reliably that soon after the impugned order was passed by the respondents, the pay of similarly placed Krishna Soni, Ex Staff Nurse, CGHS, who retired on 30.04.2011 was rectified and the Government in supersession of its previous order dated 22.09.2011 whereby the Staff Nurse post retirement had been given 3<sup>rd</sup> MACP up gradation in Grade Pay Rs. 5400, has passed a fresh order dated 07.10.2013 granting her 3<sup>rd</sup> MACP in Grade Pay Rs. 6600/- and her pay w.e.f. 01.09.2008 has been refixed in PB-3, Rs. 15600-39100+GP 6600.

8. The applicant further pleads in the third instance the ground of legitimate expectation that she should be placed at par with said Kusum Soni and other identically placed persons.

9. The respondents have filed their counter affidavit rebutting the averments of the applicant. The first ground adopted by the respondents in their reply is that the applicant was never appointed as Staff Nurse but only a Nurse (Non Resident) in the pay scale of Rs. 425- 640 with usual allowances admissible under the rules. As per recommendations of 6<sup>th</sup> CPC contained in para 3-8-15 read

with para 3-8-3 of the report, Nurses (NR) working in Postal Dispensaries were placed in revised pay structure of Grade Pay of Rs. 4600/- in PB-2 (Rs. 9300-34800) w.e.f. 1.1.2006 by notionally upgrading their pre-revised pay scale of Rs. 5000-8000 to Rs. 7450-11500. They cannot be equated with Staff Nurse as Postal Dispensaries are providing outdoor medical facilities to its beneficiaries in day hours only for limited period. There are very limited one or two posts of Nurses in Postal Dispensaries. There are no promotional posts like a Nursing Sister, Dietician, Asstt. Nursing Supdt., Dy. Nursing Supdt., Chief Nursing Officer in Postal Dispensaries. Accordingly, three financial upgradations available under the MACPS in the hierarchy Grade Pay of Rs. 5400 in PB-2 and Rs. 5400/- in PB-3 with increment of Rs. 3 per cent at the time of each financial upgradation. In the third place, the respondents in reply to Para 4(iv) regarding reply under RTI Act submit that orders of the Government are still awaited, which were subsequently issued on 18.09.2012 on the basis of which the applicant was granted MACP. According to this circular, DOPT has allowed Nurses (NR) in the Department of Posts three financial upgradations under the MACP Scheme in the hierarchy of Grade Pay of Rs. 4800, Rs. 5400 (PB2) and Rs. 5400 (PB-3) with benefit of increment of 3% at the time of each financial upgradation subject to



fulfillment of terms and conditions of the Scheme. The applicant was accordingly granted the 3<sup>rd</sup> MACP on the receipt of these instructions.

10. Learned counsel for the respondents has vehemently argued that the OA be dismissed as the demand of the applicant was illogical, illegal and unreasoned made on the basis of the irrelevant facts.

11. The applicant in his rejoinder application by and large reiterated the facts already stated. It was contended therein that the Nursing Staff, who had already been granted 1<sup>st</sup> and 2<sup>nd</sup> financial upgradations in Rs. 5500-9000 and Rs. 6500-10500 as per provisions of ACP Scheme prior to 31.08.2008, have to be granted revised pay as per 6<sup>th</sup> CPC with reference to the pay granted under ACP Scheme. Thereafter, their entitlement under MACP Scheme has to be adjudged w.e.f. 1.9.2008 taking into account the replacement Pay Band and corresponding Grade Pay in which their revised pay is fixed w.e.f. 1.1.2006. It was entirely wrong on the part of the respondents to consider for three financial upgradations under MACP in promotional hierarchy of Rs. 4800, Rs. 5400 (PB2) and Rs. 5400 (PB-3), as if she were entitled to all three upgradations under the MACP Scheme of 2009. Thereby the respondents have ignored the provisions of CCS (RP)

Rules, 2008 as well as Paras 6, 6.1, 6.2 and 7 of the MACP Scheme by granting her replacement/revised 6<sup>th</sup> CPC pay with reference to pre-revised scale of Rs. 6500-10500 which she had been drawing w.e.f. 16.07.2005. Thus, being a part of Nursing Cadre, she is entitled to pay revision in terms of Para 3.8.3 and Para 3.8.15 of the 6<sup>th</sup> CPC Report and is also entitled to the benefit of Para 6 and 6.1 and 6.2 of Annexure-1 of the MACP Scheme dated 19.05.2009.

12. We have carefully scrutinized the pleadings of the parties and such documents as have been submitted by them and have also listened to oral arguments advanced by their respective counsels. On the basis of the above, we find the following issues germane to arrive at a satisfactory conclusion in this case:-

- (i) Whether the applicant is governed by the common category scale recommended by the 6<sup>th</sup> Central Pay Commission ?
- (ii) Whether the pay of the applicant will be fixed on the basis of two ACPs already granted in the 6<sup>th</sup> CPC and 3<sup>rd</sup> MACP will be granted on the basis thereof?
- (iii) What reliefs, if any, can be granted to the applicant?

13. Insofar as the first of the issues is concerned, we take a note of the fact that Section I of Part-A of First Schedule of the CCS (RP) Rules provides revised Pay Bands and Grade Pays for posts carrying present scales in Group 'A', 'B', 'C' & 'D' and their corresponding Pay Bands/Scales and Grade Pays. Section II of Part-B of First Schedule of the RP Rules provides revised pay scales for certain common categories of staff. For easy reference, we reproduce SI. No. XII Nursing & Paramedical Staff of Section II of Part B as below:-

SI. No.	Post	Present Scale	Revised Pay Scale	Pay Band	Grade Pay	Para No. of the Report
XII Nursing & Paramedical Staff						
1.	Staff Nurse	5000-8000	7450-11500	PB-2	4600	3.8.15
2.	Nursing Sister	5500-9000	7500-12000	PB-2	4800	
3.	Dietician G.II/Lecturer in PT/OT/Radiographer	6500-10500	7450-11500	PB-2	4600	
4.	Asstt. Nursing Superintendent	6500-10500	8000-13500	PB-3	5400	
5.	Deputy Nursing Superintendent	7500-12000	8000-13500	PB-3	5400	
6.	Nursing Superintendent	8000-13500	10000-15200	PB-3	6600	
7.	Chief Nursing Officer	1000-15200	12000-16500	PB-3	7600	

14. Here, our attention has also been drawn towards RTI reply dated 1.4.2009 (Annexure-5). In this RTI reply, it has been unequivocally stated the recommendations mentioned in First Schedule Part-B Section-II in respect of

Nursing and Paramedical Staff are also applicable to same Staff working in Postal dispensaries under Department of Posts. The reply further makes out that no separate notification/orders have been issued by the Department of Posts for dispensary staff. In respect to the queries as to what would be PB and GP of a Nurse, who had been granted 2<sup>nd</sup> ACP in pre-revised scale of Rs. 6500-10500 (before 1.1.2006) and whether the orders mentioned in Para (B) in respect of revised rates of allowance would also be applicable to Nursing staff working in Postal Dispensaries under Department of Posts and whether any separate notification/orders have been issued by the Department of Posts in respect of revision of allowances, reply has been that the relevant orders were not received from Ministry of Health and Family Welfare and are being awaited.

15. The much awaited order appears to have been finally received on 18.09.2012, which has been annexed to the counter affidavit. For the sake of greater clarity, we prefer to extract this order as below:-

“No.4-7/MACPS/2009/PCC  
Government of India  
Ministry of Communications & IT  
Department of Posts  
(Pay Commission Cell)

Dak Bhawan, Sansad Marg,  
New Delhi-110001

Dated: 18-09-2012

All Heads of Postal Circles

All GM (Finance)/Directors of Accounts (Postal)

Subject: Admissibility of Financial Upgradation under MACPS to the cadre of Nurse (Non Resident) in Postal Dispensaries

Consequent upon implementation of the recommendations of 6<sup>th</sup> Central Pay Commission (CPC) contained in Para 3.8.15 and read with Para 3.8.3 of the report Nurses (NR) working in Postal Dispensaries was placed in revised pay structure of Grade Pay of Rs. 4600 in the Pay Band PB-2 (Rs.9300-34800) w.e.f. 01.01.2006 by notionally upgrading their pre-revised pay scale of Rs.5000-8000 to Rs. 7450-11500.

2. Prior to implementation of 6<sup>th</sup> CPC recommendations, Nurses (NR) in Post Dispensaries were I the pre-revised scale of pay of Rs. 5000-8000. In the absence of defined promotional hierarchy, they were eligible to financial upgradations under ACP Scheme of August, 1999 to the pay scales of Rs. 5500-9000 and Rs. 6500-10500 on receipt first ACP and second ACP upgradation respectively.

3. Following the notional upgradation of pay scale of Nureses (NR) in Post Dispensaries to the pre-revised scale of Rs. 7450-11500 (higher than the pay scale even admissible to them under ACP II) w.e.f. 01.01.2006, this Directorate received references from various Circles seeking clarification on application of Para 5 Annexure I to this Directorate OM No. 4-7/(MACP)/2009-PCC dated 18.09.2012 which provided that promotions earned/upgradations granted under the ACP Scheme in the past to only those grades which now carried the same grade pay to merger of pay scales/upgradation of posts are to be ignored. However, the said OM did not contain a provision about ignoring promotions earned/upgradations granted under the ACP Scheme in the past to those grades where the entry grade was granted a higher pay scale by the 6<sup>th</sup> CPC than the scale that was admissible to the promotional post/allowed under ACP Scheme prior to the implementation of 6<sup>th</sup> CPC's recommendations.

4. The matter was examined in consultation with Nodal Department i.e. DoPT, and vide Diary No. 55880/CR/12 dated 23.08.2012 that Department has concurred with the proposal of Department of Posts that in the case of Nurses (NR) of Department of Posts, the financial upgradations granted in the pre-revised pay scales of Rs.5500-9000 & Rs. 6500-10500 are to be ignored for the purpose of grant of MACP keeping in view the application of Para 5 of Annexure I ibid. Further, DoPT has also allowed Nureses (NR) in the Department of Posts three financial upgradations under the ACP Scheme in the hierarchy of grade pays of Rs. 4800, Rs. 5400 in PB-2 and Rs. 5400 in PB-3 with benefit of increment of 3% at the time of each financial upgradation subject to fulfillment of terms and conditions of the Scheme.

5. The above clarification may be brought to the notice of all concerned for implementation.

6. This also disposes Gujarat Circle letter No. A&P/3-15/Reptn/PMD/2011 dated 29.03.2012 DA (P) Lucknow letter No. PA-IX/Pay Fixation/AA/Anandam/TR-D96 dated 16.04.2012 & UP Circle letter No. STA/434-XA/Dip/Misc/12/3 dated 23.03.2012.”

The instructions in para 4 makes it abundantly clear that in the case of Nurses (NR) of Department of Posts, the financial upgradations granted in the pre-revised pay scales of Rs. 5500-9000 & Rs. 6500-10500 are to be ignored for the purpose of grant of MACP. The DOPT has allowed Nurses (NR) in the Department of Posts three financial upgradations under the MACP Scheme in the hierarchy of Grade Pays of Rs. 4800, Rs. 5400 (PB2) and Rs. 5400 (PB-3) with benefit of 3% at the time of each financial upgradation. In view of these instructions of the DoPT, the applicant has been rightly granted 3<sup>rd</sup> MACP on 17.07.2011 in the Pay Band (Rs. 15600-54000) with Grade Pay of Rs. 5400 (PB3). We have also noticed prayer (b) of Relief(s) clause wherein the applicant has sought quashing of the order dated 11.03.2014, which has been issued on the basis of OM dated 13.09.2008. However, the applicant has not sought quashing of the said OM. Till so long as this OM continues to stand, the reliefs sought by the applicant cannot be granted and we are afraid that it would continue to stand till so long as it is not challenged

and quashed. Therefore, we have no option but to dismiss this OA for want of proper challenge with the clarification that the instant order will not stand in a way of the applicant where she so desires. No order as to costs.

**(Dr. B.K. Sinha)**  
**Member (A)**

**(A.K. Bhardwaj)**  
**Member (J)**

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