

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.359/2013

Order Reserved on: 15.12.2016
Order pronounced on: 20.12.2016.

**Hon'ble Dr. K.B. Suresh, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

1. All India Ordnance Factories,
Para Medical Staff Association,
(Affiliated with INTUC-10084/INDWF
304/AIHE&WC),
Head Office at Jabalpur,
Through the General Secretary AIOFPMSA
(Mr. K.S. Rana), Qtr. No.3493/B, Type-III,
Sector-II, Vehicle Factory Estate,
Jabalpur-482009 M.P.
2. Shri K.S. Rana, S/o Late Sh. B.S. Rana,
General Secretary AIOFPMSA,
Qtr. No.3493/B, Type-III,
Sector-II, Vehicle Factory Estate,
Jabalpur-482009 M.P.
3. Virendera Kumar Kori,
Pharmacist, presently posted at
Gun Carriage Factory,
Jabalpur,
Madhya Pradesh.
4. Vivek Bhatnagar,
Son of late Shri Jagmohan Lal,
Ordnance Factory Board,
Muradnagar, Ghaziabad,
Uttar Pradesh.

-Applicants

(By Advocate: Shri Sudarshan Rajan with Shri Ramesh Rawat)

Versus

1. Union of India through
The Secretary,
Ministry of Defence,
Department of Production and Supplies,
Central Secretariat,
New Delhi-110 001.

2. The Ordnance Factory Board,
Through its Director General,
10A, S.K. Bose Road, Kolkata-700001.

-Respondents.

(By Advocate : Mr. V.S.R. Krishna)

O R D E R

Mr. K.N. Shrivastava, Member (A):

Through the medium of this OA, filed under Section-19 of the Administrative Tribunals Act, 1985, the applicants have prayed for the following specific reliefs:-

“A. Quash the impugned orders placed at annexure A-1 of the compilation being contrary to the law of the land and the settled principles of law including failure to grant notice to the applicants before withdrawal of the benefits from them.

B. Direct the respondents to continue to grant the MACP scheme to the Pharmacists working with the Ordnance Factories as under:-

1 st ACP	:	PB-II Grade Pay Rs.4600/-
IIInd ACP	:	PB-II Grade Pay Rs.4800/-
IIIrd ACP	:	PB II Grade Pay Rs.5400/-

C. Direct the respondents not to stop/withdraw the benefits of the MACP scheme given to the Pharmacists working in Ordnance Factory Board.”

2. The brief facts of this case are as under:-

2.1 The applicant No.1 is an Association of Para Medical Officers working in various hospitals of Ordnance Factory Board (OFB) - respondent No.2. They were initially recruited as Pharmacist (entry grade) in the pay scale equivalent to 6th Central Pay Commission (CPC) pay scale PB-2+Grade Pay of Rs.2800/-. At that time, Pharmacist cadre had three grades, namely Entry Grade, Grade-II and Grade-I. On the basis of the recommendation of the 6th CPC Grade-II and Grade-I Pharmacists were merged into one and the

new grade was rechristened as 'Pharmacist'. Thus, post 6th CPC only two grades in the Pharmacist cadre exist in OFB, namely Pharmacist (entry grade) and Pharmacist in the Grade Pay of Rs.2800 and Rs.4200 respectively; both in PB-2.

2.2 The claim of the applicants is that they are entitled for three financial upgradations under the Modified Assured Career Progression (MACP) Scheme to the Grade Pays of Rs.4600, 4800 and 5400. In this connection they have placed reliance on the order of this Tribunal in OA-3441/2012 – **All India CGHS Employees Association & Ors. v. Union of India & Ors.**, dated 10.08.2011; the operative part of which reads as under:

“22. Based on the above, we are of the view that the impugned order dated 11.11.2011 (Annexure-A/1) cannot be legally sustained and has to be quashed and set aside. We accordingly do so. With the quashing of the impugned order dated 11.11.2011, the question of any recovery to be made from the applicants would automatically not arise. Respondents are directed to forthwith implement the financial upgradation granted vide Directorate General of Health Services letter dated 16.07.2010 communicating grant of 1st, 2nd and 3rd MACP in the grade of Rs.4600/-, Rs.4800/- and Rs.5400/- respectively. Consequential action shall be taken by the respondents accordingly within a period of 12 weeks from the date of receipt of a copy of this order.”

2.3 As their request for financial upgradation under the MACP Scheme, in accordance with the Tribunal's order in OA-3441/2012, has been denied to them by the respondents vide impugned Annexure A-1 order dated 10.08.2011, they have filed the instant OA.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The applicants thereafter filed their rejoinder.

4. The respondents in their reply have contended that subsequent to the Tribunal's order dated 31.01.2014 in OA-3441/2012, the Tribunal has passed another order dated 24.02.2015 in OA-2861/2013 – **All India Defence Pharmacists' Association & Another v. Union of India & Others.** In this order the Tribunal has held that placement of Pharmacists (entry grade) in the Grade Pay of Rs.4200 of Pharmacist after completion of two years of service is to be construed as 1st MACP upgradation and thus the 2nd and 3rd MACP upgradations to Pharmacists are to be given in the Grade Pays of Rs.4600 and Rs.4800 only. The operative part of the order reads as under:

“15. First of all, we do not agree with the learned counsel for the respondents that because OA 3732/2012 has been referred to a Larger Bench this matter should also be referred to the Larger Bench, as the facts of both the cases are completely different. In this case, we are dealing with the post of Pharmacist. In the judgment in OA 3441/2012, somehow the existence of Ministry of Defence/ DoP&T clarification dated 19.07.2013 was not brought to the notice of the Tribunal, which is being brought to our notice now and similar was the position with OA 760/PB/2012 decided by the Chandigarh Bench of the Tribunal. The authority to issue any clarification under MACP guidelines is the DoP&T and what the Ministry of Defence does internally is not relevant and, therefore, the order dated 29.04.2011 issued by the office of the CGDA will not be considered. Moreover, just because the word `promotionhas been replaced by the word `placement, does not logically mean that the NFG will not be treated as first upgradation under the MACP. In fact, that is why, the Ministry of Defence consulted the DoP&T and the DoP&T vide letter dated 4.07.2012 issued clarification that the placement from GP 2800/- to GP 4200/- after two years of service in the entry grade in Pharmacist Cadre is required to be treated as financial upgradation under MACPS. The clarification issued by the Ministry of Defence in consultation with the DoP&T is final. In our view, in light of these additional documents, there is no need to refer the matter to a Full Bench.”

5. The arguments of the learned counsel for the parties were heard on 15.12.2016.

6. We have perused the two orders of the Tribunal referred to in the foregoing paragraphs. Admittedly, the Tribunal in **All India CGHS Employees Association** (supra) has held that placement of Pharmacists (entry grade) having Grade Pay of Rs.2800 in the Pharmacist Grade Pay of Rs.4200/- is not to be considered as promotion, and hence the three financial upgradations under the MACP Scheme are to be given in the Grade Pays of Rs.4600, 4800 and 5400 respectively. In the latter order of the Tribunal in **All India Defence Pharmacists' Association** (supra) the Tribunal's order in **All India CGHS Employees Association** (supra) has been distinguished. It is observed that "...somehow the existence of Ministry of Defence/ DoP&T clarification dated 19.07.2013 was not brought to the notice of the Tribunal....."

7. The MACP guidelines dated 19.05.2009 (Annexure A-4) clearly stipulate that in the matter of MACP, the DoPT is the nodal department who is authorized to give requisite clarifications from time to time. The DoPT in the case of Pharmacists have clearly advised the Ministry of Defence vide OM dated 04.07.2012 (page 94 of the paper-book) that upgradation to all Non-Functional Grades (NFGs) are to be treated as MACP upgradation. The Ministry of Defence have

communicated the advice of the DoPT vide OM dated 19.07.2012 to respondent No.2. Accordingly, the respondent No.2 have issued the impugned Annexure A-1 OM dated 10.08.2011. The Tribunal in **All India Defence Pharmacists' Association** (supra) has taken note of the DoPT clarification and accordingly has held that placement of Pharmacists (entry grade) from Grade Pay Rs.2800/- to the Grade of Pharmacist in the Grade Pay of Rs.4200/- after putting in two years of regular service, as communicated vide Annexure A-5 OM dated 18.11.2009 by the Department of Expenditure, is to be treated as first financial upgradation under the MACP Scheme. The Tribunal has correctly observed that the advice of the DoPT to Ministry of Defence and in turn the Ministry of Defence advice to respondent No.2 were not brought to the notice of the Tribunal in **All India CGHS Employees Association** (supra) and hence the Tribunal then took a different view in the matter.

8. The controversy involved in the present OA is identical to that in **All India Defence Pharmacists' Association** (supra). The order of the Tribunal in **All India Defence Pharmacists' Association** (supra) squarely applies to the instant case. In addition, we would like to refer to Annexure A-7 of the Department of Expenditure OM dated 02.06.2010 on the issue of revised pay structure of common category posts of Pharmacists cadre furnished to National Council (Staff Side),

Joint Consultative Machinery for Central Government
Employees wherein it has been stated as under:

“Subject: Revised pay structure of the common category posts of Pharmacists cadre-clarification-reg.

Reference is invited to this Department’s Office Memorandum No.1/1/2008-IC dated 18th November, 2009 on the above subject. As per para 2 of this OM, Pharmacist Grade-II and I will be merged and designated as Pharmacist (non-functional grade) in PB 2 with grade pay of Rs.4200/- and the grade will be granted to Pharmacist (entry grade) on non-functional basis after 2 years of service. In the grade pay of Rs.2800. In view of this, the word ‘promotion’ in the second sentence of para 3 of the OM may be read as placement. **Such placement will, however, be subject to vigilance clearance.**”

9. In this OM it is clearly stipulated that placement of Pharmacists (entry grade) after completion of two years of service, in the grade of Pharmacist with Grade Pay Rs.4200/- will be subject to vigilance clearance. It is well understood that such clearances are required only in the event of promotions and not otherwise. Looking from this viewpoint also, it is absolutely clear that placement of Pharmacists (entry grade) in the Grade Pay of Rs.4200 would be treated as first financial upgradation under the MACP Scheme.

10. In the conspectus of the discussions in the foregoing paragraphs, we are of the opinion that the order of this Tribunal in **All India Defence Pharmacists’ Association** (supra) (OA No.2861/2013, dated 24.02.2015) is squarely applicable to the instant case. In terms of the said order, this OA is dismissed.

11. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Dr. K.B. Suresh)
Member (J)

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