

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

OA 2647/2014

Reserved on: 8.03.2016
Pronounced on: 15.03.2016

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

Sushma Narula,
Aged about 53 years
W/o Shri Ashok Narula
R/o House No.282, Indira Vihar
Near Mukherjee Nagar,
Delhi-110009

(Through Shri Sidharth Joshi, Advocate)

Versus

1. Government of N.C.T. Delhi
Health and Family Welfare Department
9th Floor, Delhi Secretariat
2. Directorate of Health Services
F-17, Karkardooma, Delhi
3. A.C.P. Cell
Government of N.C.T. Delhi,
Health and Family Welfare Department
5th Floor, Delhi Secretariat, Delhi
4. Preventive & Social Medicine Department
Maulana Azad Medical College
New Delhi
5. Lok Nayak Jai Prakash Hospital (LNJP)
Jawahar Lal Nehru Marg,
Near Delhi Gate, New Delhi-110002

... Respondents

(Through Shri Vijay Kumar Pandita, Advocate)

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

The applicant was appointed as a Staff Nurse on *ad hoc* basis in Lok Nayak Hospital on 8.12.1984. Vide office order dated 8.03.2000 of the Directorate of Health Services (DHS), Government of National Capital Territory of Delhi (GNCTD), on being selected by the Delhi Subordinate Services Selection Board (DSSSB), she was appointed as Public Health Nurse in the pay scale of Rs.5000-8000 on the strength of the Directorate and posted at School Health Scheme, DHS from the said date. Her resignation from the post of Staff Nurse was accepted by the Lok Nayak Hospital on 1.03.2000. She was posted at Maulana Azad Medical College (MAMC) with effect from 29.11.2005. She was granted first Modified Assured Career Progression (MACP) on completion of 10 years on 1.03.2010 in the Grade Pay of Rs.4600/-, which was later upgraded to Rs.4800/- vide order dated 24.01.2011. Clearly the first MACP was granted to the applicant by the MAMC after completion of 10 years on joining as Public Health Nurse and not from her initial date of appointment in 1984. Her pay was upgraded and fixed in the pay scale of Rs.5500-9000 with effect from 15.04.2005. Thereafter, her Grade Pay was enhanced to Rs.5400/- under first MACP itself with effect from 1.03.2010.

2. The applicant made several representations for grant of Assured Career Progression (ACP) as she completed 12 years of

service in 1996 in Lok Nayak Hospital itself. However, MAMC, vide letter dated 12.05.2014, informed her as follows:

"With reference to the representation of Smt. Sushma Narula, PHN dated 20.02.2014 regarding grant of ACP. In this regard, it is informed that the request/ case was re-considered by competent authority and it has been observed that the applicant may pursue her ACP case from her parent department i.e. L.N. Hospital where she has completed 12 years of regular service before joining this institution. There is No sanctioned post of Staff Nurse in this institution. Her record will be forwarded to the concerned department/ authorities as & when demanded.

This issues with the approval of Competent Authority."

Being aggrieved with this order, the applicant has filed the instant OA seeking the following reliefs:

- "(i) set aside the impugned order dated 12.05.2014 passed by the respondent in favour of the applicant and against the Respondents.
- (ii) direct the respondent to grant financial upgradation in accordance with the Law and Scheme of A.C.P. and M.A.C.P. and do the pay fixation accordingly and pass consequent reliefs in favour of the applicant and against the respondents.
- (iii) grant interest @ 18% in favour of the applicant and against the respondents on account of delay in payments to applicant.
- (iv) pass such other and further orders which this Hon'ble Tribunal may deem fit and proper in the interest of justice."

3. According to the learned counsel for the applicant, since the applicant had joined initially on 8.12.1984, she completed 12 years of service on 7.12.1996 and, therefore, as per ACP

guidelines, she should be granted first upgradation under ACP Scheme with effect from 8.12.1996. It is argued that in their letter dated 10.11.2014 to the Special Secretary (H&FW), MAMC authorities had expressed the following opinion:

"It is further submitted that the demand of the applicant seems to be justified. The problem is that the applicant is seeking ACP for the post of Staff Nurse for the period 1984 to 2000 when she was posted in Lok Nayak Hospital and she is now working as PHN in MAM College after fresh appointment on a different post. There is no sanctioned post of Staff Nurse in this college, so this office has not been able to fulfill her demand. Both MAM College & Lok Nayak Hospital are under administrative control of Health & Family Welfare Department, Govt. of NCT of Delhi and all these three departments have been made respondents in this case. It would be prudent if Health & Family Welfare Department, Govt. of NCT of Delhi decide further course of action in the matter in order to avoid meaningless prolongation of the case. This institution will abide by the direction of Health & Family Welfare Department in the matter."

4. Our attention was also drawn to clarification No.4 issued on MACP Scheme, which is as follows:

"4. The benefits under ACPS are limited to higher pay scale and do not confer designation, duties and responsibilities of the higher post. Hence, the basic criterion to allow the higher pay scale under ACPS should be whether a person is working in the same pay scale for the prescribed period of 12/24 years. Consequently, so long as a person is in the same pay scale during the period in question, it is immaterial whether he has been holding different posts in the same pay scale. As such, if a Government servant has been appointed to another post in the same pay scale either as a direct recruit or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), it should not make any difference for the purpose of ACPS so long as he is in the same pay scale. In other words, past promotion as well as past regular service in the same pay scale, even if it was on different posts for which appointment was made by different methods like direct recruitment, absorption (transfer)/ deputation,

or at different places should be taken into account for computing the prescribed period of service for the purpose of ACPS. Also, in case of absorption (transfer)/deputation in the aforesaid situations, promotions earned in the previous/present organisations, together with the past regular service shall also count for the purpose of ACPS. However, if the appointment is made to higher pay-scale either as on direct recruitment or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), such appointment shall be treated as direct recruitment and past service/promotion shall not count for benefits under ACPS."

5. According to the applicant, the scale of Staff Nurse and Public Health Nurse is the same and, therefore, past service should be counted. It is also stated that in letter No.F.11(6)/05-MC/Estt.-I/9304 dated 10.11.2014, the respondents themselves have stated that the applicant is entitled for ACP. The applicant has cited the cases of Baisakhi Chakraworty and others to allege that the respondents have been discriminatory towards her. Finally, our attention was drawn to the ACP Scheme (Annexure A-13) and specifically to definition of regular service which is as follows:

"Note : "Regular Service" means eligible service that could be counted for regular promotion as per rules.

In cases, where an employee has moved from one post to another post on direct recruitment/absorption basis or on deputation basis, followed by absorption, past service in the same grade shall also be counted towards regular service."

It is stated that this would make it absolutely clear that the applicant's past service should be counted for the purpose of ACP.

6. The respondents in their reply have taken the stand that the service matters of Nurses are dealt with by Delhi State Nursing Cell, DHS and, therefore, the applicant's case has been forwarded to Delhi State Nursing Cell for taking necessary action. It is further stated that there is no sanctioned post of Staff Nurse in MAMC and, therefore, MAMC is in no position to grant the MACP benefit.

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

8. There can be no doubt that having served for 12 years in Lok Nayak Hospital, the applicant is eligible to be considered for first upgradation under ACP Scheme with effect from 8.12.1996. Therefore, the letter dated 12.05.2014 is only an attempt by the GNCTD to shirk responsibility. Both MAMC and Lok Nayak Hospital are within the jurisdiction of GNCTD and the issue should have been resolved by the GNCTD without creating a situation where the applicant has to run to this Tribunal for what she is rightfully entitled.

9. From the definition of regular service and past service in the MACP Scheme and ACP Scheme, since the applicant was in the same pay scale/ pay grade, her past service would have to be counted.

10. The OA is, therefore, allowed. Impugned order dated 12.05.2014 is quashed and set aside and GNCTD directed to grant financial upgradation in accordance with law and ACP/

MACP Schemes. The respondents shall fix the pay of the applicant accordingly within a period of two months of the receipt of a copy of this order. Arrears would, however, be paid from the date the OA has been filed i.e. 30.07.2014. No costs.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

/dkm/