

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.3738/2013

Reserved on : 09.09.2015.

Pronounced on: 08.02.2016

Hon'ble Shri Sudhir Kumar, Member (A)
Hon'ble Shri A.K.Bhardwaj, Member (J)

Smt. Satinder Bhatia
VB-60, Street No.2, Varinder Nagar,
New Delhi-110 058. ...Applicant.

(By Advocate: Shri Subhash C. Jindal)

Versus

1. New Delhi Municipal Council
Palika Kendra, Parliament Street
New Delhi-110 001.
Through its Secretary
2. Deputy Director Health
New Delhi Municipal Council
Palika Kendra, Parliament Street
New Delhi-110 001. ...Respondents

(By Advocate: Shri Rajeev Kumar)

ORDER

Per Sudhir Kumar, Member (A):

The applicant of this OA is before this Tribunal since she is aggrieved by the Order of Respondent No.2 fixing her 1st financial upgradation under the Assured Career Progression Scheme (ACP, in short) in the pay scale as Rs.9300-34800+GP Rs.4600 instead of Rs. 15600-39100+GP Rs.5400, to which she lays a claim to have become eligible with effect from 18.05.2008, and had represented also to the respondents accordingly.

2. The facts of this case lie in a narrow compass. The applicant was appointed as Physiotherapist with the respondents on 18.05.1996, vide

(2)

appointment letter dated 01.05.1996. However, later on, in view of the letter dated 24.05.2001, received from the Govt. of N.C.T. of Delhi, her pay scale was revised to Rs. 5500-9000/- with effect from 18.05.1996.

3. After completion of 12 years of regular service with the respondents on 18.05.2008, the applicant requested for grant of pay scale of Rs. 15600-39100+GP Rs.5400. However, the respondents only granted her 1st ACP in the pay scale of Rs.9300-34800+GP Rs.4600 with effect from 18.05.2008. The applicant represented, praying for correction of the fixation of her pay scale after grant of 1st ACP in the pay scale of Rs.15600-39100+GP 5400, as she claimed that the same had been granted in other organizations of Health Department of Delhi. When she did not receive any reply, she sought information about status of her representation under the RTI Act. Information was then provided to her, informing that her request had been considered at length, and it was found that the same cannot be granted, since there are no promotional avenues for her post, and, as a result, she had been granted the next available Grade Pay, as per Rules.

4. The applicant once again represented on 05.08.2013 and requested to reconsider the grant of 1st ACP benefit, as had been granted to her, as per the Government of India's Instructions dated 09.08.1999 (Annexure P/11) regarding introduction of the ACP Scheme vide OM dated 09.08.1999, and the Circular dated 26.11.1999 (Annexure P/12), through which the New Delhi Municipal Council had adopted the ACP Scheme. Since the respondents still did not redress her grievance, the applicant has filed the present OA, and has taken the grounds that she was eligible for grant of 1st financial upgradation under the ACP Scheme, after having rendered 12 years

(3)

of regular service, and that the newly introduced Modified Assured Career Progression Scheme (MACP, in short) dated 19.05.2009 (Annexure P/15), became effective only with effect from 01.09.2008, while her eligibility for her 1st ACP arose much prior to that, with effect from 18.05.2008, i.e. prior to the introduction of the said MACP Scheme. She has assailed the reply furnished to her by the respondents under the RTI Act, stating that the grant of ACP scale after 12 years of regular service is not based upon the promotional avenues, and has submitted that even if there are no promotional avenues, still the respondents are bound to give ACP scale after 12 years regular service only to the next promotional scale. In the result, the applicant has prayed for the following reliefs:

- "a. setting aside of order dated 16.05.2011 (Annexure A/3) passed by Respondents and directing them to grant the Applicant pay scale of Rs. 15600-39100+GP 5400 w.e.f. 18.5.2008 with all consequential benefits like Arrears etc. as per 1st ACP after completion of Regular Service of 12 years with the Respondents in view of instructions of the Government dated 9.8.99 and adoption of the same by the NDMC (Annexure P/11).
- b. Any other order may kindly be passed as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.
- c. Cost of the application be also allowed to the applicant."

5. The respondents filed their counter reply on 11.03.2014. In their counter reply, the respondents stated that initially the pay of the applicant was fixed at Rs. 1400-2300/-, and under the 5th CPC, her pay scale was fixed at Rs.5500-9000/-.

6. Thereafter, in pursuance of the pay scales fixed under the 6th CPC, her pay was fixed w.e.f. 01.01.2006 in PB-2 at Rs. 9300-34800 + Grade Pay of Rs.4200/-. It was submitted that in the light of the fact that the post of the

(4)

applicant was an ex-cadre and stand alone/isolated post, and did not have any prescribed promotional hierarchy available, therefore, she was sanctioned the immediate next higher pay scale as provided for under the 6th CPC under the ACP Scheme.

7. The respondents submitted that the request of the applicant for grant of the higher pay scale, as claimed by her, was examined, and it was found that the pay scale of Rs. 15600-39100+GP 5400 was not the immediate higher pay scale, as stipulated under the Rules regulating the grant of ACP benefits for isolated posts, but in fact it was equal to a much higher pay scale. It was submitted that that pay scale demanded by the applicant is applicable for the posts of Senior Physiotherapists, which are existing positions/posts in the Cadre/hierarchy of Physiotherapists in some very large Government Institutes, but that those senior posts do not exist in the Respondent-Hospital. It was further submitted that it had been duly communicated to the applicant at the time of her applying for, being selected, and joining with the respondent Hospital that she was joining an ex-cadre isolated post, and, therefore, her post did not contain any promotional avenues. Therefore, any wrong-doing on the part of the respondents denying her 1st ACP financial upgradation in the pay scale of Rs. 9300-34800+GP 4600 was sought to be justified. It was submitted that the applicant had been provided her ACP benefit strictly in accordance with the rules and regulations, as well as the Instructions of the Government of India, and that the applicant cannot now seek entitlement to the pay grade and benefits for which she is not entitled to under the rules.

(5)

8. It was submitted by the respondents that the ACP Scheme dated 09.08.1999 clearly stipulates that in case of isolated posts, in the absence of any defined hierarchical grades, financial upgradation shall have to be given in the immediately next higher (standard/common) pay scale. It was submitted that no comparison can be sought to be made with the case of Respondent-Hospital with the Safdarjung Hospital and Loknayak Hospital, New Delhi, both of which have a well defined hierarchical structure in the cadre of Physiotherapists, and the applicant cannot be granted parity with the prevalent pay scale in those Hospitals, which have an entirely different employment structure as compared to the Respondent-Hospital. It was, therefore, submitted that the ACP benefit granted to the applicant after 12 years of regular service was correct, and it does not lie for the applicant to state that she has not been correctly awarded the 1st ACP benefit by the respondents.

9. It was further submitted that mere making repeated representations does not create a new cause of action, and therefore, the applicant cannot claim that there has been any default on the part of the respondents, due to the alleged failure of the respondents to reply to her representation dated 05.08.2013, when all her previous requests on that issue were always answered. It was, therefore, prayed that the OA may be dismissed, and litigation costs may be awarded to the respondents.

10. The applicant filed her rejoinder on 26.04.2015, more or less reiterating her contentions as already made out in the OA. It was admitted that even though no promotional avenues are available, the respondents are still duty bound to give ACP benefits after 12 years of regular service to the

(6)

promotional pay scale. Reliance had been placed upon in the case of **Grade I DASS Officers' Association vs. Secretary, Govt. of India & Others**

148 (2008) DLT 342 (DB). It was further submitted that the higher pay scale of Rs. 15600-39100 + GP 5400 has been given to Physiotherapists at the senior level in all Delhi Government/Central Government Hospitals, irrespective of the number of posts of Physiotherapists in that Hospital. It was, therefore, submitted that the applicant has been victim of discrimination and arbitrariness on the part of respondents, who have not followed the Rules, Regulations and Guidelines issued under the ACP Scheme after the 5th CPC. It was, therefore, once again prayed that the OA may be allowed.

11. Heard. Both the learned counsel argued on the line of their pleadings available on record. Learned counsel for the applicant further sought shelter behind the order passed by a Coordinate Bench of this Tribunal dated 22.05.2014 in OA No.1798/2014 in **Mahendra Kumar Dubey vs. Union of India & Others**.

12. We have given our anxious consideration to the facts of the case. It is clear that the applicant became eligible for her 1st ACP financial benefit on 18.05.2008, before the introduction of the MACP Scheme w.e.f. 01.09.2008 through OM dated 19.05.2009 (Annexure P/15). Therefore, it is clear that the order passed in **Mahendra Kumar Dubey** (supra), which was passed in the context of the difference between the ACP & MACP Schemes cannot be made applicable in the facts of the instant case. In fact, the applicant would be entitled to her next financial upgradation under the new MACP Scheme

(7)

after completion of 20 years of regular service as on 18.05.2016, since she had joined her service on 18.05.1996.

13. That being the case, the instant case of the applicant can only be considered under the contours and parameters of the ACP Scheme dated 09.08.1999 (Annexure P/11), as it does not relate to the MACP Scheme at all.

14. One more thing which is clear in the instant case is that the applicant occupies a stray or an isolated post in her organization, and there are no promotional posts in her own cadre of Physiotherapists available in the Respondent-Organization. Therefore, most of the contents of the ACP Scheme Circular dated 09.08.1999 do not become applicable to the case of the applicant, as the Conditions listed in the ACP Scheme are inextricably interlinked with the condition of the availability of promotional avenues, for which there is, otherwise, a Departmental Promotion Committee, which considers grant of substantive promotions. The case of the applicant has, therefore, to be covered only under the Condition No.7 of the Conditions for Grant of Benefits under the ACP Scheme dated 09.08.1999 (Annexure P/11), which states as follow:

"7. Financial Upgradation under the scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Department concerned in the immediately next higher (standard/common) pay-scales as, indicated in Annexure-II which is in keeping with Part-A of the First Schedule annexed to the Notification dated September 30, 1997 of the Ministry of Finance (Department of Expenditure). For instance, incumbents of isolated posts in the pay-scale S-4, as indicated in Annexure-II, will be eligible for the

(8)

proposed two financial upgradations only to the pay scale S-5 & S-6. Financial upgradations on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts which have no avenues of promotion at all. Since financial upgradations under the Scheme shall be personal to the incumbents of the isolated post, the same shall be filled at its original level (pay-scale) when vacated. Posts which are part of a well-defined cadre shall not qualify for the ACP Scheme on 'dynamic' basis. The ACP benefits in their case shall be granted conforming to the existing hierarchical structure only."

(Emphasis supplied).

15. As per the highlighted portion of the paragraph above, the post of the applicant being an isolated post, her eligibility for the next higher pay scale under the ACP Scheme was only to the immediate next higher standard/common pay scale, as indicated in Annexure-II of the said ACP OM dated 09.08.1999, which the applicant has not produced, but was as follows:

"Annexure-II

Standard/Common Pay Scales

As per Part-A of the First Schedule Annexed to the Ministry of Finance (Department of Expenditure) Gazette Notification, dated September 30, 1997.

Sr. No.	Revised pay-scales	
	Rs.	
1 to 8.	Not reproduced.	
9.	S-9	5,000-150-8,000
10.	S-10	5,500-175-9,000
11.	S-11	6,500-200-10,500
12 to 18	Not reproduced."	

(9)

16. However, she has claimed the applicability of Annexure P-2 to her case, in which the following are the pay scales prescribed in respect of those institutions where promotional posts are available:

"Present Designation & Pay-Scale	Approved Designation & Pay-Scale by GNCT, Delhi
1. Physiotherapist/ Occupational Therapist. (Rs.5500-9000)	Physiotherapist/ Occupational Therapist. (Rs.5500-9000)
2. Sr.Physiotherapist/ Sr.Occupational Therapist. (Rs.5500-9000)	Sr.Physiotherapist/ Sr.Occupational Therapist. (Rs.8000-13500)
3. Chief Co-ordinator (Rs.6500-10500)	Chief Physiotherapist/ Chief Occupational Therapist. (Rs.10,500-15,200)"

17. But since the applicant's pay scale was an isolated Fifth Pay Commission Pay Scale S-10 Rs.5500-9000/, which has been equated with the Pay Band-2 Rs.9300-34800+Grade Pay Rs.4,200 as per Annexure 4 of the Respondents' Counter Reply, the respondents have rightly opined that the 1st financial upgradation under the ACP Scheme available to the applicant would have to be to the very next higher standard/common pay scale, equivalent to Vth CPC S-11 Pay Scale, which has now been equated to VIth CPC Pay in Pay Band-2 at Rs.9300-34800+GP Rs.4200/=, but has subsequently been merged with the Vth CPC Pay Scale S-12, equivalent to VIth CPC Pay of Pay Band-2 Rs.9,300-34,800+Grade Pay of Rs.4,600.

18. Therefore, we find no merit in the contentions of the applicant that the respondents have deviated from the ACP Scheme OM dated 09.08.1999

(10)

while granting her the 1st financial upgradation under the ACP Scheme. The OA is, therefore, dismissed, but there shall be no order as to costs.

(A.K.Bhardwaj)
Member (J)

(Sudhir Kumar)
Member (A)

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