

**Central Administrative Tribunal
Principal Bench**

OA No.4453/2017
MA No.4608/2017

Orders Reserved on: 14.03.2018.

Pronounced on: 05.04.2018.

**HON'BLE MR. JUSTICE PERMOD KOHLI, CHAIRMAN
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)**

1. Rajeev Bhargava, Drugs Inspectors, Group 'B'
Aged about 45 years,
S/o Sh. B.B. Bhargava
R/o 159, Rajdhani Nikunj Aptt., I.P. Extn.,
Delhi-92.
2. Rohit Bajpai, Drugs Inspectors, Group 'B'
Aged about 47 years,
S/o Sh. U.B. Bajpal
R/o C-2/19-A, Lawrence Road, Delhi-35.
3. Deepak Sharma, Drugs Inspectors, Group 'B'
Aged about 46 years,
S/o Sh. M.C. Sharma,
R/o CA/18-C, Shalimar Bagh, Delhi-88.
4. Sanjay Kumar, Drugs Inspectors, Group 'B'
Aged about 45 years,
S/o Sh. Rajinder Kumar
R/o Plot No.182/183, First Floor, Pkt.6, Sector 24,
Rohini, Delhi-85.
5. Balram Sahu, Drugs Inspectors, Group 'B'
Aged about 49 years,
S/o Sh. N.K. Sahu,
R/o B-201, DDA Flats, Near Sports Complex,
Pitampura, Delhi-34.
6. D. Sudhakaran, Drugs Inspectors, Group 'B'
Aged about 47 years,
S/o Sh. G. Durai Swami,
R/o 78C, Pocket-VI, MIG Flats,
Mayur Vihar Phase-III, New Delhi.
7. Abhijeet Ghose, Drugs Inspectors, Group 'B'

Aged about 46 years,
S/o Sh. Arun Kumar Ghosh.
R/o C-34, Puru Apartments,
Sector -13, Rohini,
Delhi.

8. Mahinder Singh, Drugs Inspectors, Group 'B'
Aged about 46 years,
S/o Late Sh.Jaimal Singh,
R/o Flat No. 5603, Ashoka Enclave, Plot No.8A,
Sector -11, Dwarka, New Delhi-75.
9. Dinesh Boken, Drugs Inspectors, Group 'B'
Aged about 45 years,
S/o Sh. H.C. Boken,
R/o 156A1/16, Shivaji Nagar, Gurgaon.
10. Asad Tasleem Ansari, Drugs Inspectors, Group 'B'
Aged about 49 years,
S/o Late Sh. Tasleen Ahmed,
R/o L-17, Batia House, Near Masjid Khaliulla,
Jamia Nagar, Okhla, New Delhi.
11. Sundeep B. Jivnapurkar, Drugs Inspectors, Group 'B'
Aged about 45 years,
S/o Sh. G. Jivnapurkar
R/o C2C/2/239-B, Janakpuri
New Delhi-110058.

.... Applicants

(By Advocate: Shri M.K. Bhardwaj)

VERSUS

1. Govt. of NCT of Delhi,
Through its Chief Secretary
I.P. Estate, Delhi Sachivalaya Delhi.
2. The Principal Secretary(Health & Family Welfare)
Govt. of NCT o Delhi
I.P. Estate,
Delhi Sachivalaya,
Delhi.
3. The Drugs Controller,
Drugs Control Department
Govt. of NCT of Delhi,
Delhi-110032.

... Respondents

(By advocate: Shri R.N. Singh with Shri Vaibhav Pratap Singh)

O R D E R**Mr. K.N. Shrivastava, Member (A):**

This Original Application (OA) has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985, praying for the following main reliefs:

“(a) To quash and set aside the impugned order dated 24.11.2015 (A-1) and direct the respondents to grant grade pay of Rs. 6600 to the applicants as 1st Financial Upgradation on the same analogy on which similarly placed persons were granted grade pay of Rs. 6600 as 1st Financial Upgradation & 7600 as 2nd Financial Upgradation.

(b) To declare the action of the respondents in not granting the scale of Rs.15600-39100(PB-3) with Grade Play of Rs.6600 as given to similarly placed persons vide order dated 22.09.2008 & 15.10.2015 to the applicants as illegal and arbitrary and direct the respondents to grant scale of Rs. 15600-39100 with Grade pay of Rs. 6600 as 1st Financial Upgradation to the applicants from due date with all arrears of pay.”

2. The controversy involved in this OA is as to whether benefits of financial upgradations under the Modified Assured Career Progression (MACP) Scheme should be given in the next grade pay of the same pay band, if available or is to be given in the pay scale of the promotional post?

3. The factual matrix of the case, as noticed from the records, is as under:

3.1 The applicants joined under respondent no.3 as Drugs Inspectors during the years 2001 & 2002. They claim that as per the Recruitment Rules (RRs), they were eligible for promotion to the next grade of Assistant Drugs Controller (ADC) on completion of eight years of regular service.

3.2 It is stated that the Assured Career Progression (ACP) Scheme was in vogue when they joined service, according to which two financial upgradations were available on completion of 12/24 years of service, in case a government servant does not get his regular promotions. It is further stated that the promotional post of the applicants, i.e., ADC was in the pay scale of Rs.10,000-15,200 (V CPC), which got revised to PB-3 (Rs.15600-39100) + grade pay Rs.6600 (VI CPC) w.e.f. 01.01.2006.

3.3 After the implementation of the VI CPC w.e.f. 1.1.2006, the applicants who were in the pay scale of Rs.6500-10500 (V CPC) were granted the replacement scale PB-2 (Rs.9300-34800) + grade pay Rs.4800.

3.4 The applicants were granted first financial upgradation under the MACP Scheme vide order dated 20.11.2012 in the grade pay of Rs.5400 in PB-2 on completion of 10 years of regular service. Aggrieved by the said order and claiming that they should be given financial upgradation under the first MACP in the promotional grade, they filed individual appeals before respondent no.3, copies of these appeals are at Annexure A-7.

3.5 The respondents vide the impugned Annexure A-1 memorandum dated 24.11.2015 informed the President/Honorary Secretary, Delhi Administration Drugs Controller Gazetted Officers Association as under

“Memorandum

Reference your representation dated 21/08/2015 regarding appeal for grant of Grade Pay as per Promotional Hierarchy under MACP. In this regard, TRC has stated that as per OM of DoPT, 03 financial upgradation under MACPs at intervals of 10,20 and 30 years of continuous regular service is given in next grade pay in the pay band

and not in grade in next promotional post. Further, the facts and circumstances of each case vary in court of law and this could not be the ground for granting MACP in next promotional grade unless DOPT issues some guidelines in this regard. Further, Services Department has opined that benefit for a Court order are extended to the petitioners in the case. For the rest, we are guided by existing instructions of DOPT in force, till they are amended in light of Court order.”

3.6 The applicants have challenged the Annexure A-1 memorandum dated 24.11.2015 of the respondents in this OA and have claimed that they should be granted first financial upgradation under the MACP in their promotional grade i.e. PB-3 (Rs.15600-39100) + grade pay Rs.6600.

3.7 In support of their claim, the applicants have pleaded that if financial upgradations are not given in the promotional grade a situation may arise wherein the persons belonging to the same cadre may be getting different pensions on account of the anomalies being created by granting financial upgradation in the grade pay and not in the promotional grade. In this regard, they have placed reliance on the judgment of the Hon’ble Supreme Court in **Union of India v. S.P.S. Vains**, [(2008) 9 SCC 125], where it is held that persons retired from the same post cannot be given different amount of pension, as the same would be violative of Articles 14 and 16 of the Constitution of India.

3.8 It is further stated that this anomaly is also going to impact other service benefits to the applicants, namely, entitlement of travel by train/air, transport allowance, Government accommodation, CGHS facilities etc.

3.9 The applicants have also placed reliance on the following judgments:

i) Judgment of the Hon'ble Punjab & Haryana High Court in **Union of India & others v. Raj Pal & another**, dated 19.10.2011, [CWP 19387 of 2011 (O&M)], in which the Hon'ble High Court has upheld the order of the Chandigarh Bench of this Tribunal in OA No.1038/2010 vide order dated 31.05.2011. The Chandigarh Bench has held that the financial upgradations under the MACP should be given in the promotional grade.

ii) The judgment of this Bench of the Tribunal in OA No.904/2012 – **Sanjeev Kumar & Ors. v. Union of India & Ors.**, dated 26.11.2012 [OA No.904/2012], wherein in para-8 it has been held as under:

“8. In fact, the respondents have wrongly interpreted the terms and conditions mentioned in the MACP Scheme, issued by the Deptt. of Personnel & Training, in the case of the applicants. By the said Scheme, the eligible government servants are to be placed in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay and not merely in the next higher scale of pay as per the recommendations of the 6th Pay Commission. In the hierarchy after the scale of UDC, the next scale is that of Assistant. Therefore, the respondents should have given the next higher grade pay and pay band attached to the next promotional post in the hierarchy, namely, the Assistants carrying the pay scale of Rs.9300-34800 and the grade of Rs.4200/-.”

4. The applicants have also filed MA No.4608/2017, seeking condonation of delay of one year (365 days) in filing the OA. They have pleaded that the reliefs claimed in the OA are recurring in nature, hence delay in filing the OA may be condoned. In support of it, they have relied on the judgment of the Hon'ble Supreme Court in the case of **M.R. Gupta v. Union of India and others**, [(1995) 5 SCC 628].

5. Pursuant to the notices issued, the respondents have filed reply in the MA only, in which they have made the following important averments:

i) As per the MACP Scheme notified by the Central Government vide DoPT OM dated 19.05.2009, financial upgradations are to be given only in the next grade pay and not in the promotional grade. The applicants were in the grade pay of Rs.4800 in PB-2 (Rs.9300-34800) and thus have been correctly given the first financial upgradation under the MACP to the grade pay of Rs.5400/- in the same pay band on completion of 10 years of service.

ii) A representation was made by the Association of Drugs Controller Gazetted Officers, of which the applicants are members, seeking financial upgradation under the MACP in the promotional grade, i.e, PB-3 (Rs.15600-39100) + grade pay Rs.6600, which has been rejected by the respondents vide impugned Annexure A-1 order.

6. When the case was taken up for consideration on 14.03.2018 it was felt by the Tribunal that the OA can also be disposed of togetherwith the MA without insisting on the reply in the OA, as the controversy involved lies in a very narrow compass. Arguments of Shri M.K. Bhardwaj, learned counsel for the applicants and that of Shri R.N. Singh were heard. The gist of the arguments of Shri Bhardwaj was that the applicants are seeking rightful financial upgradation benefits to them in the promotional hierarchy whereas they have been granted such benefits only in the next grade pay and hence there cannot be any limitation in filing the OA, seeking the service benefits rightly due to the applicants. He submitted that such benefits are in the nature of recurring cause and hence limitation shall not apply, as held by the Hon'ble Supreme Court in **M.R. Gupta** (supra).

7. *Per contra*, Shri R.N. Singh argued that the first financial upgradation under the MACP was granted to the applicants way back on 20.11.2012. They kept quiet all these years and finally chose to file the instant OA on 23.11.2017 and hence this OA suffers severely on account of delay and laches. The delay involved cannot be condoned. In support of his arguments Shri Singh placed reliance on the following judgments:

- i) **S.S. Rathore v. State of Madhya Pradesh**, [(1989) 4 SCC 582,
- ii) **Union of India & Ors. v. M.K. Sarkar**, [(2010) 2 SCC 59;
- iii) **State of Orissa & Anr. V. Mamata Mohanty**, [(2011) 3 SCC 436.
- iv) **State of Karnataka v. S.M. Kotrayya**, [(1996) 6 SCC 267.
- v) **Batala Cooperative Sugar Mills Ltd. v. Karam Singh & Ors.**, [(2018) 1 SLR 715 (P&H)].

8. We have considered the arguments of the learned counsel for the parties and also perused the pleadings and the documents attached thereto. The financial upgradation under ACP/MACP grant grants enhancement in the salary of the Government servants and the salary amount in turn impacts various other service benefits accruing to the Government servants. Hence, we are of the view that the issue arising on account of ACP/MACP financial upgradations are in the nature of recurring cause for which the limitation would not apply, as held by the Hon'ble Supreme Court in **M.R. Gupta** (supra). Hence, we allow MA-4608/2017 and condone the delay in filing the OA.

9. Coming to the main issue whether financial upgradations should be given in the next grade pay, as mentioned in the MACP Scheme or in the promotional grade. From a meaningful reading of the MACP Scheme, which is at Annexure A-3, it is quite evident that the Government had

chosen to make a clear departure from the ACP Scheme. The ACP Scheme, which came into effect following implementation of the V CPC recommendations w.e.f. 1.1.1996, had stipulated two financial upgradations in the case of a stagnating Govt. servant in the pay scale of his promotional hierarchy without changing his designation and nature of work and responsibilities. The first financial upgradation was available after completion of 12 years of service and the second after completion of 24 years of service. Under the MACP Scheme, however, effective from 1.1.2006 and implemented on the recommendation of the VI CPC, a stagnating Government servant is entitled for three financial upgradations on completion of 10, 20 & 30 years of service. This Scheme, however, tries to maintain an equitable balance between the interests of the Government servants and that of the Exchequer. The objective seems to be that while granting financial upgradations to eliminate the sufferings of the Government servants on account of stagnation in service, it is also to be ensured that the Exchequer does not get unduly overburdened in terms of the financial liabilities arising on account of grant of MACP benefits. This seems to be the reason for the introduction of a new concept of grade pay which gets further established from the replacement scales provided under the VI CPC for various posts. It is to be noted that the pay band of present post and that of promotional post could be the same but the grade pay would make differentiation between the present post and the promotional post. It is further noticed that there are some intermediary grade-pays provided between the grade pay of the present post and that of the promotional post, within the same pay band.

10. In this regard, we find it useful to extract the relevant portion of the MACP and the same is done and reproduced below:

“2. MACPS envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section 1, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. Thus, the grade pay at the time of financial upgradation under the MACPS can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion. In such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/organisation will be given only at the time of regular promotion.”

11. It is not in dispute that the applicants continue to be in the posts of Drugs Inspector. Even after completion of regular service of eight years, they have not been able to secure their promotion to the next grade of ADC perhaps due to non-availability of vacancies. After the implementation of the VI CPC recommendations, the applicants who were in the pre-revised pay scale of Rs.6500-10500 have now been granted the replacement pay scale of PB-2 (Rs.9300-34800) + grade pay Rs.4800 under the VI CPC. No doubt, if they get their regular promotion as ADC they would be entitled for getting the pay scale of the promotional post, i.e., PB-3 (Rs.15600-39100) + grade pay Rs.6600. Since they have not been granted regular promotion and have only been given first financial upgradation under the MACP Scheme, the respondents have correctly given the next grade pay of Rs.5400/- in PB-2. This is perfectly in consonance with the MACP Scheme. Hence, we do not find any flaw in the order dated 20.11.2012 (Annexure A-4) by virtue of which financial upgradation to the grade pay of Rs.5400 has been granted by the respondents to the applicants. Consequently, we are of the view that the impugned Annexure A-1 communication dated

24.11.2015 by the respondents to the association of the applicants is also perfectly in order. We also wish to observe that no part of MACP Scheme has been quashed or set aside by any Court.

12. As regards judgments of the Hon'ble High Court of Punjab & Haryana in **Raj Pal & Another** (supra) and this Bench in **Sanjeev Kumar & Others** (supra), suffice to say that no law has been laid down in these judgements. They are judgments in *personam* and not in *rem*.

13. In the conspectus of the discussions in the foregoing paras, we do not find any merit in the OA. The OA is dismissed.

14. There shall be no order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

‘San.’