

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

OA 3815/2014
MA 3289/2014

Orders reserved on: 18.12.2015
Order pronounced on: 4.01.2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

1. Mrs. Rani S. Samual
W/o Shri R. Samual
 2. Mrs. Padma Sachan
W/o Shri R.V.S. Sachan
 3. Mrs. Gita Rani Bhandari
W/o Shri Vinod Bhandari
 4. Mrs. K.K. Varshney
W/o Shri Sushil Kumar
 5. Mrs. Santosh Rani
W/o Shri Vinod Kumar
 6. Mrs. R.J. Shetty
W/o Shri M. Jaiyram Shetty
 7. Mrs. Bimla Aggarwal,
W/o Shri Ravi Prakash Aggarwal
 8. Mrs. Anita D. Singh
W/o Shri Dharam Kr. Singh
All working as Chief Matron,
Under Northern Railway
Central Hospital, New Delhi-110055
 9. Mrs. E.M. Mathi
s/o Shri Mahender Mathai
Retd. As Chief Matron
R/o E-11/58, 1st Floor,
Hauz Rani, Near Krishna Mandir,
Malviya Nagar, New Delhi-110017
- ...Applicants

(Through Shri Manjeet Singh Reen, Advocate)

Versus

Union of India & others : through

1. The Secretary
Ministry of Railways
(Railway Board)
Rail Bhawan, New Delhi
 2. The General Manager
Northern Railway
Baroda House, New Delhi
 3. The Divisional Railway Manager,
Northern Railway
State Entry Road,
New Delhi
 4. The Medical Officer,
Northern Railway
Central Hospital, Basant Lane
New Delhi
- ... Respondents

(Through Shri Kripa Shankar Prasad, Advocate)

ORDER

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

The applicants through this OA have prayed for grant of third upgradation under the Modified Assured Career Progression Scheme (MACP for short) in the Grade Pay of Rs.6600/- instead of Rs.5400/-.

2. The applicants are Chief Matrons in the Northern Railway Hospitals. They were granted the Grade Pay of Rs.5400/- of the post of Chief Matron and later granted the pay scale of Rs.15600-39100 in the Grade Pay of Rs.6600/- under the MACP Scheme vide order dated 18.01.2010 w.e.f. 01.09.2008. However, they were issued show cause notice dated 19.11.2013 seeking their reply as to why the above benefit of Grade Pay of Rs.6600/- should not be withdrawn from them. The applicants

gave a representation dated 26.12.2013 in which they raised the following issues:-

"In this connection, we would like to invite your kind attention to Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi's OM No.Z-2901171/2012-N dated 11th April 2013, the nodal ministry in respect of Medical & Para Medical Staff, permitting financial upgradation to Asstt. Nursing Superintendent i.e. Chief Matrons of Railway Hospitals in PB-3 & GP- 6600/- consequent to an order dated 09/05/2012 passed by the CAT in OA No. 141/2012 MA No. 109/2012 which has been upheld not only by the High Court, Delhi but also the Hon'ble Supreme Court where the SLP filed by the Government has been dismissed vide order dated 04/03/2013. It is needless to mention that the Ministry of Health & Family Welfare vide OM dated 11th April 2013 has further decided that no recovery shall be made from the applicants on this account.

2. That since the matter has been adjudicated at the higher judicial forum of the country i.e. supreme court therefore, the order of CAT needs to be implemented in letter and spirit uniformly on all similarly situated employees of the Central Government including railway employees."

3. The respondents thereafter issued the impugned order dated 09.10.2014 which encloses the letter dated 21.08.2014 by the Railway Board stating as follows:-

"In connection with a court case pertaining to S.E. Railway, it has come to notice of Board's office that Chief Matrons (Grade Pay-5400/PB-3) are being allowed Grade Pay of Rs.6600/PB-3) as 3rd financial upgradation under MACP Scheme, in this regard, it is pointed out that the promotional post of Chief Matrons is Asstt. Nursing Officer (ANO) in the same Grade Pay of Rs.5400/PB-3. Necessary instructions regarding grant of financial upgradation in such cases have been issued vide Board's letter of even number dt. 13.12.2012 (RBE No.142/2012) which stipulates that in such situation financial upgradation under MACP Scheme would be granted in the same Grade Pay as financial upgradation under MACP Scheme cannot be to a higher Grade Pay than what can be allowed to an employee on his normal promotion."

4. Learned counsel for the applicants states that while issuing the impugned order the respondents have not cared to address the issues raised by the applicants in their representation dated 26.12.2013 and to that extent, the order is defective and should be quashed. He further states that OA No.141/2012, **Delhi Nurses Union (Regd) Vs. UOI and Ors** which was on similar issue, was allowed by the Tribunal by holding as follows:-

“Hence, in view of the judgment of the Hon’ble High Court, it is evident that the next higher Grade Pay has to be given and not the Grade Pay in the next hierarchical post. It is immaterial that the next hierarchical post is DNS and on that post the Grade Pay is Rs.5400/-, but while granting the third financial upgradation under MACPS, the benefit is to be granted as per the provisions thereof, and it is the next higher Grade Pay which is admissible to an employee, and the next higher Grade Pay is Rs.6600/-. Since ANS is in the Grade Pay of Rs.5400/-, while granting the benefit of third MACPS, ANS will be given the Grade Pay of Rs.6600/- which is the next Grade Pay.”

It is stated that this was challenged before the Hon’ble High Court of Delhi in Writ Petition No.5146/2012, **Union of India Vs. Delhi Nurses Union (Regd) & Anr.** which was dismissed vide order dated 24.08.2014.

5. Learned counsel for the applicants also drew our attention to office memorandum dated 11.04.2013 of the Ministry of Health and Family Welfare (Annexure A-12) in which the Ministry decided to grant the Grade Pay of Rs.6600/- to the Assistant Nursing Superintendent on completion of 30 years of service. Relevant para 6 of that order reads as follows:-

"6. The matter has been examined in the Ministry and in compliance of the Hon'ble CAT, New Delhi's judgment dated 09.05.2012 passed in OA No. 141/2012 and in supersession of this Ministry's OM No. A-11015/01/2011-N dated 09.12.2011 it has been decided to grant the benefit of 3rd MACPS to the Assistant Nursing Superintendent on completion of 30 years of service in the grade pay of Rs.6600/- in PB-3 in the scale of pay of Rs.15600-39100. No recovery shall be made from the applicants."

Similarly, our attention was drawn to office order No.149 dated 26.02.2014 by which Dr. Baba Bhim Rao Ambedkar, Government of NCT of Delhi granted the Grade Pay of Rs.6600 to the similarly staff in the Hospital. Learned counsel also drew our attention to Annexure A-2 RBE No.10/2009 dated 10.06.2009 in which para 2 provides as follows:-

"2. The 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 Railway Services (Revised Pay) Rules, 2008. This 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/ organization will be given only at the time of regular promotion."

It is thus stated that the MACP upgradation can be different than what is available at the time of regular promotion.

6. Learned counsel for the applicants further argued that because the letter dated 13.12.2012 issued by the Railway Board and letter dated 9.10.2014 issued by the respondents are clarificatory in nature and it is well settled principle of law laid down by the Hon'ble Supreme Court in number of cases

including the case of **Director General of Posts & Ors, Vs. B. Ravindran & Others**, (1997) 1 SCC 641, that the Govt. could not have, under the guise of a clarificatory order, taken away the right which had accrued to such employee by the main order and therefore the Railway Board as well as GM (P), cannot taken away the rights of the applicant for their 3rd MACP benefits by issuing some clarificatory order and therefore the whole action of the respondents is illegal and arbitrary.

7. It is added that the Full Bench of the Tribunal in the case of **Shri Parkash Chand Vs. Union of India & Ors.**, judgment reported in (2005) 2 ATJ 617 held that clarification cannot take away the right which has accord by the main rules/scheme and the relevant para of the same is reproduced here as under:-

“19. In the first instance, it must be stated that the clarification, in this process, supplants the ACP Scheme. We have already referred to above that the state is at liberty to amend the same in accordance with law, but by clarification, the amendment cannot be effected. The clarification, by no stretch of imagination is clarifying any ambiguity because we have already referred to above that the language is plain and clear of the scheme and the clarification are modifying the scheme and supplanting something new, that is not permissible in law.”

8. It is further argued that the MACP Scheme stands on its own terms and conditions and a subsequent clarification changing the very terms of the Scheme cannot be treated to be “clarification” as per the principle laid down by the Hon’ble Supreme Court in Civil Appeal Nos. 7514-7515 of 2005 decided

on 27.11.2012 in **Union of India & Others Vs. N.R. Parmar & Ors.**, which principle reads as under:-

“One of the essential ingredients of a clarification is, that it “clarifies” an unclear, doubtful, inexplicit or ambiguous aspect of an instrument. A “clarification cannot be conflict with the instrument sought to be clarified.”

9. Lastly, learned counsel placed reliance on the judgment of Hon’ble High Court of Delhi in WP (C) No.1738/2014, **Union of India & ors. Vs. Gaje Singh & ors.** dated 28.10.2014 which was preferred assailing the order dated 15.02.2013 passed in OA No.2815/2011 by this Tribunal. This Tribunal had directed the Respondent-railways to consider grant of MACP benefit to the applicants as per Clause-5 of Annexure-I of the Scheme. The writ petition was dismissed.

10. Learned counsel for the respondents states that the basic principle is that any financial upgradation under ACP/MACP Scheme cannot be to a higher grade than what could be allowed to an employee on his normal promotion as these schemes are basically to mitigate the problems of genuine stagnation faced by the employees due to lack of promotional avenues. In this regard, learned counsel placed before us the following arguments:-

(i) In terms of Para 5 of the Annexure to Board’s policy instructions dated 19.06.2009, promotions earned/upgradations granted under ACP Scheme in the past to those grade which now carry the same Grade Pay due to merger of pay scales/upgradations of posts recommended

by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACPS.

(ii) In terms of Para 8 of Board's policy instructions on MACP scheme dated 10.06.2009, promotions earned in the post carrying same Grade Pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of MACP Scheme. It is for the reason that the case of employees earning promotions as per their cadre hierarchy, though the promotional post is in the same Grade Pay is not case of stagnation but case of promotion in same Grade Pay and therefore not entitled for financial upgradation under the Scheme.

(iii) The instructions regarding grant of financial upgradation under the scheme in respect of an employee to feeder grade of a cadre/category where promotional post also happens to be in same Grade Pay, has been issued vide Board's letter dated 13.12.12 which stipulated that financial upgradation under ACP/MACP scheme cannot be to a higher Grade Pay than what can be allowed to an employees on his normal promotion. In such cases financial upgradation under MACP scheme would be granted in same Grade Pay. Reasoning of his instruction lies in the fact that the ACP/MACP Scheme has been introduced as device to mitigate the stagnation and hardship faced by the employees due to lack of adequate promotional avenue and therefore logically the benefit allowed under the ACP/MACP Scheme cannot be more that what would accrued to employee on normal promotion. Thus the clarification issued by Board's letter dated 13.12.2012 is complimentary to the instructions in para 8 of the Annexure to Board's policy instructions on MACP dated 10.6.2009 and in consonance with the policy perspective and scope of MACP scheme.

(iv) Based on the recommendations of 6th CPC, an expert body for the purpose of determining pay scales in respect of various categories of Govt. employees, the Chief Matron and Assistant Nursing Officer has been allowed Grade Pay of Rs.5400/- of PB-3. These posts continue as a distinct grades of nursing cadre, carries, distinct, designation, duties and responsibilities and procedure for appointment to these posts. These bare facts establishes in categorical terms, the said two grades of Nursing Cadre viz. Chief Matrons and Assistant Nursing Officer has not been merged and as per their recruitment rule lies as feeder and promotion post in their promotional hierarchy. Evidently,

the cadre of Nursing cadre to which applicants belongs is covered with para 8 of Annexure to Board's instructions dated 10.06.2009 and Board's instructions dated 13.12.12.

(vii) In case the applicant are allowed higher Grade Pay of Rs.6600/PB-3 as financial up gradation under MACP Scheme it would not only be violative of its policy objective but also cause serious anomaly to the extent that the seniors of the applicants who have got promoted to next functional post of Assistant Nursing Officer would be drawing Grade Pay of Rs.5400/PB-3 despite discharging duties of the higher post of Assistant Nursing Officer and applicants would be drawing Grade Pay of Rs.6600/PB-3 though continue to discharge duties of lower post. An isolated interpretation of the instructions regarding MACP without appreciating policy objective would not only cause such serious anomaly as brought out hereinabove but also nullify the recommendations for 6th Central Pay Commission regarding grant of Grade Pay of Rs.5400/PB-3 for Assistant Nursing Officer.

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(v) The MACP scheme is a policy decision of the Govt. which provides for three financial up gradations to the employees who are genuinely stagnating. The Hon'ble Supreme Court in the matter of **Narmada Bachao Andoolan Vs. UOI and Others** (SCC 2000 Vol.10 page 664) have ruled that "courts in the exercise of their jurisdiction will not transgress into the field of policy decision". Further in the case of **Sumangalam Nagrath Vs. UOI and others** (SCC 1999 (L&S) 1319) the Supreme Court have held that "it is not for the Tribunal to examine the wisdom of rules..... Policy decision is not debatable in a judicial forum."

The benefit of MACP to the under mentioned applicants were extended in GP-6600 vide Railway Board letter no.PC-V/2009/ACP/2 dated 10//6/2009 circulated vide GM (P) HQ's PS No.13500/110 dated 23/06/2009.

Ms. Rani Samul chief Matron

Ms. Padma Sachan

Ms. Santosh Rani

Ms. R.J.Shetty

Ms. Anita D.Singh

However, further instructions have been received vide Rly Board's letter no.PC-V/2009/ACP/2 dated 13/12/2012 in which it was clarified that ACP/MACP Schemes have been introduced by the Government in order to mitigate the problems of genuine stagnation faced by employee due to lack of promotional avenues. Thus, Financial up gradation under ACP/MACP Scheme cannot be to Higher Grade Pay than what can be allowed to an employee on his normal promotion. In such cases financial up gradation under MACP Scheme would be granted to the same Grade Pay.

A copy of the said Railway Board's letter dated 13/12/2012 is annexed herewith and marked as ANNEXURE R-1. In pursuance of the above instructions of the Railway Board's letter, a show cause Notice was served upon the applicants, who were granted the benefit of GP-6600 under MACP.

A copy of the aforesaid show cause Notice is annexed herewith and marked as ANNEXURE R-2 (Colly).

It is submitted that on receipt of the reply of show cause notice by the applicants, the same was considered and decided vide GM (P) letter no. 831-E/004/Pt.II/EIIBII (Loose) dated 10/10/2014 accordingly the pay of all the applicants has been revised vide notice. 752-E/MACP/CL-III/CH dated 14/10/2014.

A copy of the said letter dated 10/10/2014 is annexed herewith and marked as ANNEXURE R-3."

11. Learned counsel also drew our attention to para 8 of the Annexure to RBE No.101/2009 dated 10.06.2009 which incorporates the following:-

"8. Promotions earned in the post carrying same Grade Pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of MACPS.

8.1. Consequent upon the implementation of Sixth CPC's recommendations, Grade Pay of Rs.5400 is now in two Pay Bands viz., PB-2 and PB-3. The Grade Pay of Rs.5400 in PB-2 and Rs.5400 in PB-3 shall be treated as separate Grade Pays for the purpose of grant of upgradations under MACPS."

12. Lastly, learned counsel relies on the judgment of Hon'ble Supreme Court in **Socr., Govt. of NCT of Delhi & Ors. Vs. Grade-I DASS Officers' Association & Ors.**, Civil Appeal Nos.5153-5157/2009, in which it is stated that the Supreme Court while dealing with a matter pertaining to ACP benefits had held as follows:-

"In such a situation, the contention advanced on behalf of Appellants that financial upgradation claimed by the Respondents cannot be granted because the same would be much in excess of what the officer would gain on actual promotion in the hierarchy, is found to have substance."

In fact, the appeal filed by the Government of NCT of Delhi was allowed. It is, therefore, contended that once the Hon'ble Supreme Court has laid down this ratio, there is no irregularity or illegality in the impugned order passed by the respondents.

13. Learned counsel for the applicants further contended that the judgment of Hon'ble Supreme Court in **DASS Officers' Association (supra)** addresses the issue of ACP and not MACP and in the present OA, the issue is grant of third upgradation under MACP Scheme. Therefore, the facts are different and the ratio laid down in that case by the Supreme Court will not be applicable in the present case. He has further placed before us order of this Tribunal in OA No.1038/CH/2010, **Rajpal Vs. UOI and ors**, which was upheld by the Hon'ble High Court of Punjab and Haryana vide order dated 19.10.2011.

14. We have heard the learned counsel for the parties and perused the material placed on record.

15. It is a fact that the 5th CPC and 6th CPC introduced the ACP and MACP Scheme respectively to mitigate the problems of genuine stagnation faced by the employees due to lack of promotional avenues. In the case of ACP, the upgradation were in the pay scale of post in the hierarchy of posts whereas in MACP, the promotion are to be in the next hierarchy of pay grade/grade pays.

16. The stand of the respondents, therefore, that the benefit either in ACP or MACP cannot be higher than what the employee would get if he had got a normal promotion stands to reason and the impugned order issued by the respondents, therefore, prima facie cannot be faulted. Moreover, as pointed out in para 8 of the MACP Scheme itself, since the grade pay of Rs.5400 appears both in PB-II& PB-III and Chief Matrons (Grade Pay of Rs.5400/PB-II) got promotion as Assistant Nursing Staff (Grade Pay of Rs.5400/PB-III), they would be treated as separate grade pay for the purpose of grant of MACP. Therefore, the stand of the respondents is consistent with the MACP Guidelines.

17. On the contrary, learned counsel for the applicants has argued that since para 2 to Annexure to the RBE 109/2009, it is provided that the upgradation will be in the next higher grade pay. Therefore, since the next higher grade pay is Rs.6600/-, the applicants deserves this grade pay. However, the whole Guidelines have to be read consistently and as stated above, para 8 of the guidelines make it absolutely clear that the respondents order is consistent with the MACP Scheme.

18. We are further confronted with the order of this Tribunal in OA No.141/2012 as upheld by the Hon'ble High Court vide its order dated 24.08.2012 wherein the Tribunal has held that the Assistant Nursing Staff will be given the Grade Pay of Rs.6600/- which is next Grade Pay and the department has also issued clarification dated 11.04.2013 and order dated 26.02.2014 granting this grade pay to certain Assistant Nursing Staff. Further, learned counsel for the applicants has produced this Tribunal's order in OA No.101/2015 in which this Tribunal has also granted the Grade Pay in the next hierarchy of promotion based on Punjab & Haryana High Court order. This, however, is not relevant here as the applicant seeks relief the other way round i.e. upgradation in the next hierarchy of grade pay and not promotional hierarchy. Moreover, regarding OA 101/2015 and order of this Tribunal in OA No.141/2012 (supra) upheld by the Hon'ble High Court of Punjab & Haryana, we have to consider this in the light of ratio of the judgment of Hon'ble Supreme Court in DASS Officers' Association (supra), wherein the supreme court has held that financial upgradation cannot be more than what the officer would get in actual promotion in the hierarchy. Though learned counsel for the applicants contended that this judgment will not apply in the present case as this pertains to ACP Scheme whereas this is the present scheme in MACP, we are of the clear view that the ratio of judgment has nothing to do with the ACP or MACP Schemes. It is a general principle laid down by the Hon'ble Supreme Court. Therefore, despite the orders in OA No.141/2012 (supra), the respondents

have to be guided by the ratio laid down by the Hon'ble Supreme Court in DASS Officers' Association matter (supra).

20. In view of the above, we are of the considered opinion that the impugned orders passed by the respondents are fully consistent with the MACP guidelines and internal circulars of the Railway Ministry concerning MACPs as well as the ratio settled by the Hon'ble Supreme Court in DASS Officers' Association (supra). The OA, therefore, does not succeed and is dismissed. No costs.

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)

/pj/