

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA-4215/2014

New Delhi this the 21st day of September, 2016

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

1. Ms. Juliana Ekka, aged 51 yrs; working as Chief Matron
W/o Sh. S. Prakash
208/C-2 Railway Flats
Panchkuian Road
New Delhi
 2. Ms Santosh Gora, age 53 years; working as Chief Matron
W/o Mr. Subhash Gora
141-C Railway Flats
Basant Lane
New Delhi
 3. Ms. Dorothis Ekka, age 50 years; working as Chief Matron
W/o Sh. Jaichand Ekka
F-39 Vikas Puri
New Delhi.
 4. Ms. Sushila David age 51 years; working as Chief Matron
W/o Sh. Samuel David
CIC Basant Lane
Paharganj
New Delhi.
- .. Applicants

**(By Advocate : Ms. Tamali Wad with Ms. Nidhi Jacob)
Versus**

1. Union of India,
Through
Secretary,
Ministry of Railways
Rail Bhawan
New Delhi-110001
2. Railway Board
Through Chairman
Ministry of Railways
Rail Bhawan, New Delhi.
3. Medical Director
Northern Railways
Central Hospital
New Delhi.
4. Deptt. Of Personnel & Training
Through Secretary
Ministry of Personnel, Public Grievances & Pension
North Block

New Delhi.

.. Respondents

(By Advocate : Mr. Kripa Shanker Prasad)**ORDER (ORAL)****Mr. P.K. Basu, Member (A)**

The applicants, four in number, have joined the services of the respondents as Staff Nurse on 02.01.1990, 27.06.1991, 01.07.1991 & 05.11.1992 respectively. They were granted promotion to the post of Nursing Sister during 1995-96 and thereafter as Matron during the period 1998-2001. After the recommendations of the 6th CPC were implemented, the posts of 'Matron', which was in the scale of Rs. 6500-10500(pre-revised) and 'Chief Matron', which was in the scale of Rs. 7450-11500(Pre-revised), were merged and placed in the revised scale of Rs. 15,600-39100 in Pay Band 3 with Grade Pay Rs. 5400. Since the applicants had got grade pay of Rs.5400/-, they were considered for 3rd financial upgradation under the MACP Scheme having completed 10 years of service, and were granted 3rd financial upgradation in the immediate higher grade pay of Rs. 6600/.

2. The grievance of the applicants arises because the respondents, vide order dated 14.10.2014, withdrew the 3rd financial upgradation under the MACP in the Grade Pay of Rs. 6600/- and clarified that in the light of Railway Board's instructions contained in letter dated 13.12.2012, the financial upgradation under MACPS cannot be granted to a higher pay Grade Pay than what can be allowed to an employee of his/her normal promotion. Being aggrieved by this order, the applicants have filed this OA seeking the following reliefs :-

- “(a) Summon the relevant records pertaining to grant of as well as Revocation of the 3rd Financial upgradation under MACPS in GP Rs. 6600/- to the Applicants (Matrons/Chief Matron merged cadre).
- (b) `Summon the relevant records pertaining to pay revision w.e.f. 1.1.2006 of the Assistant Nursing Officers working with the Respondent No.3
- (c) Quash and set aside the Order No. 752-E/MACP/CL-III/CH dated 14.10.2014 issued by Respondent No.3.

(d) Quash and set aside order Railway Board circular RBE No. 142/2012 dated 13.12.2012 and letter No. PC-V/2009/ACP/20/CLW on 05.03.2013 issued by the Respondent No.2

(e) Issue appropriate directions to the Respondents not to take any further action for recovery etc. In pursuance of order No. 752-E/MACP/CL-III/CH dated 14.10.2014 issued by Respondent No.3.

(f) Issue appropriate directions to the Respondents to re fix the pay of the applicants in PB-3 Rs. 15600-Rs. 39100 plus Grade Pay Rs. 6600/- with all consequential benefits as per law w.e.f. the respective dates the applicants became entitled for their 3rd MACP.

‘(g) Pass any other and further order which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

3. Learned counsel for the applicants argued that in case of MACP, unlike in case of ACP, upgradation has to be in the next higher Pay grade/ Grade Pay and in the hierarchy of pay grades/Grade Pay, the next higher Grade Pay would be Rs. 6600/-.

4. Learned counsel for the applicants relies on the judgment dated 17.03.2015 of Hon'ble High Court of Delhi in W.P. (C) 5082/2013 **Swarn Pal Singh & Ors. Vs. UOI & Ors.**, in which the High Court has categorically held that financial upgradation under MACPS has to be in the hierarchy of Grade Pay and Pay Band of the pay structure, and not the hierarchy of promotion. In this regard, she also relied on judgment dated 04.4.2011 of the Hon'ble High Court of Delhi in WP(C) 3420/2010, **R.S. Singh Sengor and Ors. Vs. UOI & Ors.**

5. Learned counsel for the applicants also referred to OM dated 17.05.2016 issued by DOP&T wherein it is clarified that in terms of decision of this Tribunal dated 28.04.2016 in OA No.351/00195/2014, the MACP benefits would be given in the hierarchy of next higher grade pay and not in grade pay of promotional hierarchy which will be payable on actual promotion.

6. It is further stated that in OM dated 09.09.2016 issued by the Ministry of Health and Welfare following clarifications have been issued :-

"A. Those Staff Nurse/Nursing Sister/Assistant Nursing Superintendent who have been awarded 1st and 2nd financial upgradation under ACP Scheme in the hierarchy Pay Scales of Rs. 5500-9000 and Rs. 6500-10500 upto 31/08/2008 may be granted a replacement Grade Pay of Rs. 4800 (in PB2) and Rs. 5400 (in PB3). Therefore, the 3rd financial upgradation under MACP Scheme, if granted to these category of officials, may be revised to Rs. 6600 in PB3 from Rs. 5400 in PB3.

B. Those Staff Nurse/Nursing Sister/Assistant Nursing Superintendent who have been granted 1st ACP in the pre-revised pay scale of Rs. 5500-9000 upto 31/08/2008 may be placed in the replacement Grade Pay of Rs. 4800 in PB2. They will be entitled for grant of 2nd and 3rd financial upgradation under MACP Scheme in the Grade Pay of Rs. 5400 (in PB2) and Rs. 5400 (in PB3) only.

C. All the remaining Staff Nurse/Nursing Sister/Assistant Nursing Superintendent who are to be granted 1st 2nd and 3rd financial upgradation under MACP Scheme may be granted next higher grade pay."

7. Based on this, it is argued that there is no doubt that the financial upgradation has to be in the hierarchy of Grade Pay and, in accordance with clarification of 9th September, 2016 in Para 'A', the 3rd financial upgradation under MACP has to be granted in the revised Grade Pay of Rs. 6600/- in PB-3.

8. Learned counsel for the respondents has relied an order passed by this Tribunal in OA 3815/2014 decided on 04.01.2016, which relates to the same issue of granting of grade pay of Rs. 6600 /- to 'Chief Matron' in the Railway Board under the MACP Scheme. We had discussed in detail in that order the various provisions of MACP Scheme and the judgements of Hon'ble Supreme Court and then dismissed the OA. In that case, the Tribunal, relying upon the decision of Supreme Court, in **Secretary, Govt. of NCT of Delhi and Ors. Vs. Grade I DASS Officers Association and Ors.** (Civil Appeal No. 5153-5157/2009) found that the respondents were fully justified in passing the impugned order, whereby it was

stipulated that financial upgradation cannot be granted more than what the officer would get in actual promotion in the hierarchy. In that case, the counsel for the applicants had raised the objection that Dass Association (supra) case does not apply in respect of ACP Scheme, whereas OA 3815/2014 relate to MACP Scheme. However, we had taken the view that the ratio of the judgment has nothing to do whether it is ACP or MACP and held that no upgradation can be granted under the MACP Scheme in a Pay Grade/Grade Pay higher than the normal Pay Grade/Grade Pay in the normal channel of promotion.

9. Learned counsel for the applicants states that the order passed by this Tribunal in OA No. 3815/2014 should be treated per incuriam, as the same has not discussed the judgement of Hon'ble High in **Swaran Pal Singh & Ors.**(supra). Moreover, it is also contended that it appears from para 16 of the order by the Tribunal that the Tribunal was persuaded to dismiss the OA under the impression that 'Chief Matron' were in PB-II with Grade Pay of Rs. 5400/- and Assistant Nursing Teacher in PB-III with Grade Pay of Rs. 5400/-, and, therefore, in accordance with para 8 MACP Scheme, they would be treated as separate grade pay for the purpose of grant of MACP. The contention of learned counsel for the applicants is that 'Chief Matrons' are also in PB-III with Grade Pay of Rs. 6600/-. Similarly, it is contended that para 5 of the guidelines (ibid) also do not apply, as in the case of the applicants, there has been no merger of scales, which is the subject matter of clause -5. Learned counsel for the applicants further relied on para 14 in Dass Officers (supra) case of the judgment of Hon'ble Supreme Court, in which the Supreme Court has held that :-

"14. In view of stipulations and conditions in the ACPs noticed above, it can be safely concluded that the financial upgradation under the ACPs is not only in lieu of but also in anticipation of regular promotion. In such a situation, the contention advanced on behalf of Applicants 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."

10. It is the contention that the Hon'ble Supreme Court laid down the ratio keeping in mind the fact that the ACP was in the hierarchy of promotional post, and, therefore, no upgradation can be granted beyond the pay scale of the promotional post. Therefore, it is contended that the ratio of judgement of the Hon'ble Supreme Court will not apply in this case as the judgment relates to the ACP Scheme whereas the present OA relates to the MACP scheme.

11. It would be seen that the identical matter was before us in OA 3815/2014 and we had dismissed the OA holding that the judgment of Hon'ble Supreme Court in Dass Officers Association (supra) has nothing to do in ACP or MACPS and the ratio laid down in Dass Officers (supra) case will squarely apply.

12. As regards the objection of the learned counsel for the applicants that the Tribunal was wrong in stating that Chief Matron was in the Pay Grade of PB-II with Grade Pay of Rs.5400/- and then come to a wrong conclusion. It would be seen that in our order (para 18), the reason why we dismissed the OA was mentioned, i.e., based on the ratio laid down by S.C. in Dass Officers' Association. So this is a mere conjecture of the learned counsel and is hence rejected.

13. Learned counsel for the applicants also relied upon the order of this Tribunal in OA No. 141 of 2012 –**Delhi Nurses Union vs. UOI & Ors.**, and stated that order has been upheld by the Hon'ble Supreme Court and, therefore, this OA be allowed in light of OA No. 141/2012. It is seen from para 4 of our order that the same grounds were raised in the earlier OA OA 3815/2014 and based on the judgment in Dass Officers Association (supra) before us, we came to the conclusion that despite the direction in OA 141/2012, the respondents are fully

guided by the ratio laid down by the Hon'ble Supreme Court in Dass Officers' Association (supra). Therefore, this arguments of the learned counsel for the applicants becomes irrelevant. On the question of our order dated 04.01.2016 in OA 3815/2014 being per incuriam as we failed to take note of the order of the Hon'ble High Court in Swarn Pal Singh (supra), two things are important. Question in that case was whether upgradation under MACP should be in next higher grade pay or the grade pay of the promotional post. What the Hon'ble High Court held is already cited above. The issue here is different. Moreover, the judgment of the Hon'ble Supreme Court, namely, in Dass Officer's Association (supra) has to prevail over any High Court order.

14. Now we take up Circular dated 17.05.2016, cited by the learned counsel for the applicants. The same has only reiterated the position that as per the MACP Scheme upgradation has to be in next higher grade pay and not grade pay of promotional post. OM dated 09th September, 2016 has been issued by Ministry of Health and Family Welfare. First, the OM does not relate to the Railways and is hence not applicable. Secondly, it applies to those who received their 1st and 2nd **upgradation** in pre-revised scales of Rs.5500-9000, keeping in view the fact that their two pay scales were merged along with Rs.5000-8000 and granted revised pay scale of PB-II with grade pay of Rs.4200. In the present OA the applicants got **regular promotion** not **upgradation** before 01.01.2006. The merger was of Rs.6500-10500 with Rs.7450-11,500. The OM, therefore, is not relevant at all. Moreover, in the matter of ACP/MACP upgradation has to be in next higher Grade Pay and not Grade Pay of promotional post. Office Memorandum issued by the DOP&T would prevail and in DOP&T OM, there is no provision for granting higher grade pay of Rs.6600/-. Moreover, the applicants have failed to place before us any order of the Hon'ble High Court or Supreme

Court that order passed in OA 3815/15 has been stayed or set aside by the superior courts.

15. In view of above, the OA is dismissed. No costs.

(Raj Vir Sharma)
Member (J)

(P.K Basu)
Member (A)

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