

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

O.A. No.2529/2016

**Reserved On:11.07.2018
Pronounced on:16.07.2018**

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

Ms. Gurmit Srivastava
W/o Shri Narendra Nath
Flat No.101, Shiv Apartments,
Plot No.475,
Pochanpur, Sector-23, Dwarka,
New Delhi-110075. ...Applicant
(By Advocate: Ms. Tamali Wad and Ms. Saumya Jain)

Versus

1. Union of India
Through Secretary,
Ministry of Communications & IT,
Department of Posts,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi.
2. Department of Personnel & Training,
Through Secretary,
Ministry of Personnel, Public Grievances and Pension,
North Block, New Delhi.
3. Chief Post Master General,
Department of Post,
Govt. of India,
U.P. Circle,
Lucknow-226001. - Respondents

(By Advocate: Sh. R.K. Sharma)

ORDER

By Hon'ble Mr. V. Ajay Kumar, Member (A)

The applicant, a Nurse (NR) in the respondent-Department of Posts, filed the OA seeking the following reliefs:-

“(a) To summon the records of the case including documents pertaining to revision of the pay of the applicant in light of the 5th CPC and 6th CPC report as well as financial upgradations granted to her till date.

(b) To quash and set aside Ministry of Communications and IT, Department of posts OM F.No.4-7/(MACPS)/2009-PCC dated 18.09.2012.

(c) To quash and set aside office order dated 11.03.2014 issued by the respondent No.3 whereby the applicant has been wrongly granted her 3rd MACP in GP Rs.5400/- in PB-3 w.e.f. 17.07.2011.

(d) On granting prayer (b) & (c) above to direct the respondents to revise the pay of the applicant w.e.f 1.1.2006 in PB-3 Grade Pay Rs.54090 in the pay scale of Rs.15600-39100 along with all consequential benefits as per law including arrears of salary.

(e) On granting prayers (b) to (d) above to direct the respondents to grant to the applicant her 3rd MACP w.e.f. 17.07.2011 in GP Rs.6600/- in PB-3 (Rs.15600-39100) along with all consequential benefits as per law including arrears of salary.

(f) To declare that clarification No.2 of OM No.1/1/2008-IC dated 13.09.2008 issued by Ministry of Finance Department of Expenditure is not applicable with regard to fixation of the applicant's pay on grant of MACP upgradation, till such time she is granted the 3rd MACP in GP Rs.6600/- in PB-3 (Rs.15600-39100) w.e.f. 17.07.2011.

(g) On granting prayers above to direct the respondents to revised her pension and gratuity and to grant arrears thereof w.e.f 31.04.2013 viz. the applicant's date of superannuation.

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

2. Heard Ms. Tamali Wad with Ms. Saumya Jain, learned counsel for the applicant and Shri R.K. Sharma, learned counsel for the respondents and perused the pleadings on record.

3. Both sides submitted elaborate arguments on various issues involved in the OA. However, it is necessary to examine the

preliminary objection raised by the respondents with regard to maintainability of the OA before we proceed with other issues.

4. The learned counsel for the respondents, while drawing our attention to the earlier judgment of this Tribunal passed by a Coordinate Bench of this Tribunal in OA No.554/2015 dated 09.03.2016 (Annexure A-1), submits that the applicant had earlier filed the said OA seeking the same reliefs and this Tribunal, after hearing both sides elaborately and after examining the whole issue, in detail, while dismissing the OA observed that prayer (b) of the relief clause wherein the applicant has sought quashing of the order dated 11.03.2014 was issued on the basis of OM dated 13.09.2008 and without challenging the said OM dated 13.09.2008, the reliefs claimed by the applicant cannot be granted and the applicant having allowed the said order to attain finality, cannot maintain the instant OA, in the present form.

5. On the other hand, the learned counsel for the applicant submits that this Tribunal while dismissing the OA No.554/2015 by its order dated 09.03.2016, granted liberty to the applicant to file a fresh OA challenging the OM dated 13.09.2008 and accordingly the applicant filed the instant OA and hence the same is maintainable.

6. OA No. 554/2015 was filed by the applicant seeking the following reliefs as was mentioned in para 2 of the judgment dated 09.03.2016 in OA No.554/2015:-

“(a) To summon the records pertaining to revision of the pay of the applicant in light of the 5th CPC and 6th CPC report as well as financial upgradations granted to her till date.

(b) To quash and set aside office order dated 11.03.2014 issued by the Respondent No.3 whereby the applicant has been wrongly granted her 3rd MACP in GP Rs.5400 in PB-3 w.e.f. 17.07.2011.

(c) On granting prayer (b) above, to direct the Respondents to revise the pay of the applicant w.e.f. 1.1.2006 in PB-3 Grade Pay Rs. 5400 in the pay scale of Rs. 15600-39100 along with all consequential benefits as per law including arrears of salary.

(d) On granting prayers (b) & (c) above to direct the respondents to grant to the Applicant her 3rd MACP w.e.f. 17.07.2011 in GP Rs. 6600/- in PB3 (Rs.15600-39100) along with all consequential benefits as per law including arrears of salary.

(e) On granting prayers (b), (c) & (d) above to direct the Respondents to revise her pension and gratuity and to grant arrears thereof w.e.f. 31.04.2013 viz the applicant's date of superannuation.

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

7. This Tribunal while dismissing the OA No.554/2015 by order dated 09.03.2016, observed as under:-

“.....The DOPT has allowed Nurses (NR) in the Department of Posts three financial upgradations under the MACP Scheme in the hierarchy of Grade Pays of Rs. 4800, Rs. 5400 (PB2) and Rs. 5400 (PB-3) with benefit of 3% at the time of each financial upgradation. In view of these instructions of the DoPT, the applicant has been rightly granted 3rd MACP on 17.07.2011 in the Pay Band (Rs. 15600-54000) with Grade Pay of Rs. 5400 (PB3). We have also noticed prayer (b) of Relief(s) clause wherein the applicant has sought quashing of the order dated 11.03.2014, which has been issued on the basis of OM dated 13.09.2008. However, the applicant has not

sought quashing of the said OM. Till so long as this OM continues to stand, the reliefs sought by the applicant cannot be granted and we are afraid that it would continue to stand till so long as it is not challenged and quashed. Therefore, we have no option but to dismiss this OA for want of proper challenge with the clarification that the instant order will not stand in a way of the applicant where she so desires. No order as to costs”.

8. A careful examination of the above observations of this Tribunal in OA No.554/2015 clearly indicate that this Tribunal has given a specific finding that “till so long as this OM (OM dated 13.09.2008) continues to stand, the reliefs sought by the applicant cannot be granted and we are afraid that it would continue to stand till so long as it is not challenged and quashed”, and accordingly dismissed the OA by clarifying that “the instant order will not stand in the way of the applicant where she so desires”. In spite of the unambiguous observations of this Tribunal, the applicant filed the instant OA without challenging the OM dated 13.09.2008 and on the contrary, the applicant only prayed in para 8(f) “to declare that clarification No.2 of OM No.1/1/2008-IC dated 13.09.2008 issued by Ministry of Finance Department of Expenditure is not applicable with regard to fixation of the applicant’s pay”. The contention of the learned counsel for the applicant that this Tribunal only observed that the applicant is required to challenge the OM dated 13.09.2008 and that seeking a declaration that the said OA is not applicable to applicant’s case also amounts to challenge and hence the OA is maintainable, cannot be accepted as this Tribunal

specifically stated that unless the OM dated 13.09.2008 is challenged and quashed, no OA is maintainable without there being a prayer for seeking quashing of the OM dated 13.09.2008. If the applicant's contention is that the said OM dated 13.09.2008 was not applicable to her case, she would have argued the same before this Tribunal in OA 554/2015 itself or questioned the judgment of this Tribunal in OA No.554/2015 dated 09.08.2016 before any higher forum. The applicant having allowed the judgment in OA No.554/2015 dated 09.03.2016 to attain finality, now cannot contend that the OM dated 13.09.2008 has no application to her case. In this view of the matter, the instant OA is liable to be dismissed as not maintainable and accordingly, there is no need to examine the other issues on merits of the OA.

9. In the circumstances and for the aforesaid reasons, the OA is dismissed as not maintainable. No costs.

(A.K. BISHNOI)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

RKS