

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Civil Contempt Petition No.200/00048/2016
&
Civil Contempt Petition No.200/00049/2016

Jabalpur, this Wednesday, the 03rd day of January, 2018

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Hari Shankar Gour, S/o Shri R.P. Gour, aged about 44 years, R/o P & T Colony, Jawaher Chow, Kotra, Bhopal, M.P.

-Petitioner/Applicant in CCP 200/00048/2016

1. P.N. Giri, S/o B.P. Giri, aged about 46 years, Resident of H. No.37-A, Kasturba Nagar, Bhopal, M.P.
2. Anil Kumar K, S/o Late K.K. Pillai, aged about 43 years, Resident of H.No.59-A, Awadhpuri, Khajurikalan, Piplani, P.O. Bhopal, M.P.
3. Ashok Kumar Yadav, S/o Late Ram Singh Yadav, aged about 46 years, R/o Ward No.15, Sharda Colony, Malakhedi Road, Hosangabad, M.P.
4. Dinesh Kumar Mishra, S/o Shri Ram Narayan Mishra, aged about 49 years, R/o G-7/26, North T.T. Nagar, Bhopal, M.P.
5. Sunil Khare, S/o Shri D.E. Khare, aged about 46 years, R/o Type-II/48, CPWD Colony, Bharat Nagar, Shahpur, Bhopal, M.P.
6. Anil Kumar O.R., S/o Shri Raman Nair, aged about 45 years, R/o Sarvadharam Colony, Kollar Road, Bhopal

-Petitioners/Applicants in CCP 200/00049/2016

(By Advocate – Shri Abhilash Dey)

V e r s u s

1. Shri Bhanu Pratap Secretary, Union of India, Government of India, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi, India 110001.
2. Dr. (Pro.) Jagdish Prasad, Director General of Health Services, Nirman Bhawan, New Delhi – 110011.
3. Shri A.C. Dhariwal, Director, National Vector Borne Deceased Control Programme, 22-Sham Nath Marg, Delhi – 110054.
4. Dr. Nikhilesh Chandra, Sr. Regional Director, Regional Office for Health & FW, 32, Purjor House, M.P. Nagar, Zone-I, Bhopal M.P.
5. Shri G.D. Khulbe, Administrative Officer, National Vector Borne Deceased Control Programme, 22-Sham Nath Marg, Delhi – 110054.

- Common Respondents/Contemnors in both CCP

(By Advocate – Shri Rishikesh Bohre)

(Date of reserving order : 20.10.2017)

O R D E R

By Ramesh Singh Thakur, JM.

Both the Contempt Petitions Nos.200/00048/2016 & 200/00049/2016 have arisen out of the final order of this Tribunal dated 17.03.2016 whereby Original Applications Nos.370/2013 & 371/2013 have been decided by way of common order.

2. CCP No.200/00048/2016 has been filed by the petitioner/applicant, viz; Hari Shanker Gour and CCP No.200/00049/2016 has been filed by Shri P.N. Giri & five others.

3. The submission of the petitioners/applicants is that the Original Applications Nos.370/2013 & 371/2013 have been decided by this Tribunal along with Original Application No.372/2013 by way of common order dated 17.03.2016 (Annexure C-1). The petitioners/applicants, as per order of this Tribunal, have preferred representation dated 21.03.2016 (Annexure C-2) along with copy of order of this Tribunal dated 17.03.2016. The submission of the petitioners/applicants is that the respondents/contemnors have not dealt with the issue in the light of the orders passed by the Guwahati and Lucknow Bench of the Tribunal and have willfully disobeyed the orders of this Tribunal.

4. The respondents/contemnors have filed counter reply to the Contempt Petition whereby it has been stated that the orders passed by the Guwahati and Lucknow Bench were challenged before the respective High Courts and the Hon'ble High Court of Allahabad, Lucknow Bench vide order dated 04.01.2017 has passed the interim order in favour of the Department. The respondents have also submitted that as per the judgment passed by the Hon'ble Supreme Court in Civil Appeal Nos.444-450 of 2002 (**Union of India & Ors. vs. C.B. Gangadharaiah & Ors.**), the respondents/contemnors have passed the order dated

27.09.2016 (Annexure R-2). It has been further submitted that Annexure R-2 is a speaking order and it is based on the judgment of the Hon'ble Apex Court. Thus, it has been submitted that the respondents/contemnors have fully complied with the orders of this Tribunal.

5. The petitioners have also filed the rejoinder and have reiterated their averments made in the CCP. They have filed the order of the Hon'ble High Court of Madhya Pradesh at Jabalpur in Writ Petition No.12910 of 2015 wherein the Hon'ble High Court had set aside the orders of this Tribunal in Original Application Nos.370, 371 and 372 of 2013 vide order dated 05.02.2016 and the matter was remanded back to us. Thereafter, this Tribunal had passed the order on 27.03.2016 and all the OA Nos. 370, 371 and 372/2013 have been disposed of with the following directions:

“7. Since two co-ordinate Benches of this Tribunal have already quashed the very same order dated 5.4.2013, which has been challenged in these Original Applications, we see no reason to defer from the views taken by two co-ordinate Benches of the Tribunal. Since the impugned order dated 5.4.2013 has already been quashed, we dispose of these Original Applications with a liberty to the applicants to submit their representations before the competent authority of the respondents to grant them similar benefits as have been granted to the applicants before the Guwahati and Lucknow Benches of the Tribunal in the aforementioned cases. If such representations are filed within a period of 10 days from the date of receipt of a copy of this order, the competent authority of the

respondents shall dispose it of within a period of three months from the date of receipt of a copy of this order”.

6. As per Annexure RJ-2, the co-ordinate Bench at Guwahati (Circuit Sitting:Shilong), vide order dated 25.06.2015 has passed the order in Original Application No.276 of 2013, which is as under:

“8. In view of the foregoing discussions and in view of the clarifications on MACP as well as the ratio laid down by the Hon’ble Supreme Court and the Hon’ble Gauhati High Court, we set aside and quash the impugned letters dated 15.03.2013 and 05.04.2013 and direct the respondents to continue extending the benefit of MCP to the applicants by counting their service from the date of their joining of posts in the entry grade i.e. taking into account their services rendered in MOFRS prior to its merger with NMEP (now NVBDCP).”

7. Similarly, as per Annexure RJ-3, the co-ordinate Bench at Lucknow has also passed the order, which is as under:

“8. The respondents have referred to DoPT clarification in their counter which was filed on 22.10.2013 that is prior to the judgement delivered by the Guwahati Bench. It is not the contention of the department that said order has been challenged through the writ/SLP before the appropriate forum. Such being the case and the facts of the case of the present O.A being similar to the facts of this and the governing dates of absorption, O.A is allowed. We deem it just and proper to set aside the impugned order dated 05.04.2013 and direct the respondents to extend the benefits of the MACP scheme to employees as granted by order dated 14.02.2012. No costs.”

8. It is clear from the judgment of co-ordinate Benches at Guwahati and Lucknow that the benefit of MACP is being extended to the applicants therein by counting their service from the date of their joining of posts in the entry grade i.e. taking into account their services rendered in MOFRS prior to its merger with NMEP (now NVBDCP). It is pertinent to mention that the respondents had passed the order dated 27.09.2016 (Annexure R-2), wherein it has been specifically mentioned that in view of judgment passed by the Hon'ble Supreme Court in Civil Appeal Nos.444-450 of 2002, the Ex-MOFRS staff would be entitled to get the benefit of MACP from the date of absorption and not from the date of joining.

9. As per Annexure R/4, which is the interim order of Hon'ble Allahabad High Court Lucknow Bench dated 4.1.2017, the department had filed Service Bench No.21 of 2017 against the order passed by the Lucknow Bench of the Tribunal in Original Application No.176 of 2013, which is as under:

“List on 20.01.2017, in the meanwhile the order impugned is modified to the extent that petitioners shall continue to pay the MACP benefit by amounting the service of the respondents from the date of their absorption till further order. It is clarified that no recovery of the amount already paid to the respondents shall be made till the next date of listing.”

10. It is clear from the record that on the basis of the orders passed by the co-ordinate Benches at Guwahati and Lucknow, this Tribunal has also passed the orders in OA Nos.370, 371 and 372/2013. But as per Annexure R-4, Service Bench No.21 of 2017 against the order dated 21.12.2015 passed by the Lucknow Bench of the Tribunal is pending before the Hon'ble Allahabad High Court, Bench at Lucknow and by way of interim order dated 04.01.2017, the orders passed by the co-ordinate Bench at Lucknow was modified to the extent that, **“petitioner shall continue to pay the MACP benefit by amounting the service of the respondents from the date of their absorption till further order. It has also been clarified that no recovery of the amount already paid to the respondents shall be made till the next date of hearing.”**

11. Therefore, since the orders of the co-ordinate Bench at Lucknow has been modified by the Hon'ble Allahabad High Court, Bench at Lucknow, as discussed above, we do not find any reason to continue with these CCPs.

12. Accordingly, at this stage, both the CCPs are dismissed and the contemnors are discharged from the notice of contempt.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-