



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 1286 of 2013

Present: Hon'ble Mr. A.K.Patnaik, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

1. SMT. MUKTI SINGHA

W/o Sri Kashinath Singha
Aged about 58 years,
By occupation Service Holder,
Working as Chief Matron in
B.R.Singh Hospital under
Respondent No.6,
R/o Birati Professor Pally,
P.O.- Birati, P.S.Nimta,
Calcutta - 51,
Dist. - 24 Parganas (North).

2. PUSPA RANI BISWAS

W/o Sri Subhas Chandra Biswas
Aged about 58 years,
By occupation Service Holder,
Working as Asst. Nursing Officer in
B.R.Singh Hospital under
Respondent No.6,
R/o Sreekanta Bhavan,
Manikpur Milon Park,
P.O. Italgacha,
P.S. Dum Dum,
Calcutta - 79.

3. SABITA DAS

D/o Late Gopal Chandra Das,
Aged about 59 years,
By occupation Service Holder,
Working as Chief Matron in
B.R.Singh Hospital, under
Respondent No.6,
R/o 31 Chandi Charan Ghosh Rd.,
Flat No. 7/D, S.Tower,
Calcutta - 700008,
P.O.-Barisha,
P.S.Haridebpur.

4. BINAPANI CHAKRABORTY (BANDYOPADHYAY)

W/o Sri Biswanath Chakraborty,
Aged about 57 years,
By occupation Service Holder,
Working as Chief Matron in
B.R.Singh Hospital, under
Respondent No.6,
R/o 156, Nanadan Kanan,
P.O. Rahara, P.S.Khardah,
Calcutta - 700118,
Dist. - 24 Parganas (North).

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5. **RUMA PAL**

W/o Sri Amalendu Pal,
Aged about 52 years,
By occupation Service Holder,
Working as Chief Matron in
B.R.Singh Hospital, under
Respondent No.6,
R/o 126/B, B.R.Singh Hospital
Railiway Quarter,
P.O. Entally,
P.S.Narkeldanga,
Sealdah,
Calcutta - 700014

6. **TAPATI GHOSH**

W/o Sri Nimai Chand Ghosh,
Aged about 56 years,
By occupation Service Holder,
Working as Chief Matron in
B.R.Singh Hospital, under
Respondent No.6,
R/o 29 Nagar Bajar Road,
Flat No. 402,
Swapnateet Apartment,
P.O. Dum Dum,
P.S. Dum Dum,
Calcutta - 700074.

7. **PURNIMA SHARMA**

W/o Sri Dulal Chandra Sharma,
Aged about 53 years,
By occupation Service Holder,
Working as Matron in
B.R.Singh Hospital, under
Respondent No.6,
R/o 126/1 R.B.C.Road,
Naihati, P.O. & P.S. Naihati,
Dist. - 24 Parganas (North).

8. **LAKSHMI SARKAR**

W/o Sri Monoranjan Sarkar,
Aged about 58 years,
By occupation Service Holder,
Working as Asst. Nursing Officer, in
B.R.Singh Hospital, under
Respondent No.6,
R/o A/8 351, Kalyani,
P.O. & P.S. Kalyani,
Dist. - Nadia,
Pin - 741235.

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9. **MAYA PRAMANIK**

W/o Sri Dipak Pramanik,
Aged about 59 years,
By occupation Service Holder,
Working as Chief Matron in
B.R.Singh Hospital, under
Respondent No.6,
R/o 156A Ghatak Road,
P.O. Kanchrapara,
P.S. Belpore,
Dist.- 24 Parganas (North).

10 **LILA GHOSH**

W/o Sri Dilip Kumar Ghosh,
Aged about 57 years,
By occupation Service Holder,
Working as Chief Matron in
B.R.Singh Hospital, under
Respondent No.6,
R/o B.R.Singh Hospital
Railway Quarter No. 114/A,
Sealdah, P.O. Entally,
P.S. Narkeldanga,
Calcutta - 700014.

11 **BABY MIRANI**

W/o Late Gour Poddar,
Aged about 58 years,
By occupation Service Holder,
Working as Chief Matron in
B.R.Singh Hospital, under
Respondent No.6,
R/o T/78G Railway Quarter,
Sealdah, P.O. Amharst Street,
P.S. Narkeldanga,
Calcutta - 700009.

12 **PRATIMA NATH**

W/o Late Nirmal Kumar Nath,
Aged about 57 years,
By occupation Service Holder,
Working as Chief Matron in
B.R.Singh Hospital, under
Respondent No.6,
R/o 15/12/B Basundhara Apartment,
2nd Floor, Flat No. 'C',
Station Road, Khardah,
P.O. & P.S. Khardah,
Calcutta - 700117,
Dist - 24 Parganas (North)

...APPLICANT

VERSUS

1. Union of India, through
The General manager,
Eastern Railway,
17 N.S.Road,
Fairlie Place,
Calcutta - 700001.

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2. The Chief Personnel Officer,
Eastern Railway,
17 N.S.Road,
Fairlie Place,
Calcutta - 700001.

3. The Divl. Railway Manager,
Sealdah Division,
Eastern Railway,
Calcutta - 700009.

4. The Sr. Divl. Personnel Officer,
Sealdah Division,
Eastern Railway,
Calcutta - 700009.

5. The Chief Medical Director,
Eastern Railway,
17 N.S.Road,
Fairlie Place,
Calcutta - 700001.

6. The Medical Director,
B.R.Singh Hospital,
Eastern Railway,
Sealdah,
Calcutta - 700014.

7. The Asst. Personnel Officer (ESM)
Divisional Railway Manager's office
Sealdah,
Eastern Railway,
Calcutta.

...RESPONDENTS.

For the applicants: Mr.A.Chakraborty, counsel
Mr.P.C.Das, counsel

For the respondents: Mr.B.K.Roy, counsel

Heard on : 21.2.2017

Order on : 27.2.2017

O R D E R

Ms. Jaya Das Gupta, A.M.

The applicants (Ms. Mukti Singha & 11 Ors.) have jointly filed this Original Application under Section 19 of the A.T.Act, 1985 seeking the following reliefs :

- a) To file and prosecute this application jointly under Rule 4(5)(a) of the CAT (Procedure) Rules, 1987 since all of them have prayed for same relief arising out of same cause of action;
- b) To issue mandamus upon the respondents, their men and agents and each of them to forthwith rescind, recall, cancel and forthwith set

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aside and/or quash the order dated 23.8.2013 being Annexure A/2 hereto and that of the order dated 12.9.2013 being Annexure A/4 hereto and not to give any or further effect to the same.

c) Pass such other or further order or orders, direction or directions, mandate or mandates as may appear to be fit and proper.

It has been submitted at the Bar that the applicants are all similarly circumstanced. Hence we will be dealing with the case of Smt Mukti Singha and the principle arrived at will apply to all the other applicants.

2. It is the case of the applicant, Smt. Mukti Singha, who is working as Chief Matron in the B.R.Singh Hospital, Eastern Railway that she had received two promotions in her career and the 3rd MACP in the Grade Pay of Rs.6600/- was awarded to her from 1.9.08. It is alleged that the respondents suddenly without any notice or giving any opportunity for submission of representation ventilating their grievances issued order dated 23.8.13, intended to refix the pay of the applicant in PB-3 with grade Pay Rs.5400/-. She has submitted a representation against the order dated 23.8.13 on 6.9.13 but the concerned authorities did not pay heed to the representation. It has also been alleged that similarly situated persons moved Principal Bench of the Tribunal in OA 141/12 [Delhi Nurses Union (Registered) Hq. Dr. Ram Monohar Lohia Hospital, New Delhi & Ors. -vs- Union of India & Ors.] which was allowed in favour of the applicants by order dated 9.5.12 and the writ/appeal filed against the said order by the respondents was ultimately upheld in favour of the applicants by the Hon'ble High Court of Delhi and the Supreme Court of India. In the above circumstances the applicants have filed the present OA seeking the aforesaid reliefs.

3. Per contra, the views of the respondent authorities have been given in details in their reply. According to the respondents, the hierarchy of the posts in the Nursing cadre in the Eastern Railway is as under :

Sl.No.	Category	Pay Band	Grade Pay
1	Staff Nurse	Rs.9300-34800/-	Rs.4600/-
2	Nursing Sister	Rs.9300-34800/-	Rs.4800/-
3	Chief Matron	Rs.15600-39100/-	Rs5400/-

It has been stated that subsequently, in terms of the RBE No.128/08, the Railway Board notified the scale of pay of Asstt. Nursing Officer which is the next promotional post of Chief Matron is as under :

Sl.No.	Category	Pay Band	Grade Pay
1	Assistant Nursing Officer	Rs15600-39100/-	Rs.5400/-

The hierarchy of the Nursing cadre in Government Hospitals at Delhi such as Ram Monohar Lohia Hospital, as notified by the Ministry of Finance Gazette Notification dated 29.8.08 is as under :

Sl.No.	Category	Pay Band	Grade Pay
1	Staff Nurse	Rs.9300-34800/-	Rs.4600/-
2	Nursing Sister	Rs.9300-34800/-	Rs.4800/-
3	Asst. Nursing Superintendent	Rs.15600-39100/-	Rs.5400/-
4	Dy. Nursing Superintendent	Rs.15600-39100/-	Rs.5400/-
5	Nursing Superintendent	Rs.15600-39100/-	Rs.6600/-
6	Chief Nursing Officer	Rs.15600-39100/-	Rs.7600/-

Thus higher Grade Pay of Rs.6600/- and Rs.7600/- is available in the hierarchy of Nurses in Government Hospitals but Eastern Railway does not have such higher Grade Pay in the Nursing cadre.

Moreover, the Railway Board vide RBE No. 142/12 has given clarification regarding grant of financial upgradation under MACP scheme to the effect that financial upgradation under MACP **cannot be to higher Grade Pay than what can be allowed to an employee on his normal promotion.** It has been stated that considering the above facts, it was concluded that the Office Memorandum of the Ministry of Health & Family Welfare dated 11.4.14 is not applicable in the case of Nursing Staff of Ministry of Railways. Accordingly, the respondents have submitted that this OA being devoid of any merit is liable to be dismissed.

4. Heard both. Consulted the records.

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5. In this case vide order, dated 3.10.2013, while allowing opportunity to the respondents to file their reply ad the applicant to file their rejoinder, this Bench of the Tribunal stayed the proposed recovery. This order has been continuing till date.

6. Before we start analysing the case, we have taken note of the strenuous submission made by the ld. Counsel for the applicant that before the order of recovery was given for excess drawal due to alleged wrong fixation no opportunity was given to the applicant for giving a representation against such order of the respondent authorities. Therefore for the ends of justice we had asked Mr.B.K.Roy, ld. Counsel for the respondent authorities to let us know by the next date of hearing whether opportunity was indeed given to the applicant by way of inviting representations against the recovery ordered by the authorities.

The respondent authorities submitted that no opportunity was granted to the applicant for making a representation as at that point of time as per the existing orders of the Railways it was not necessary to ask for representations against such over drawal.

However, while going through the pleadings of the applicant, we notice that in the Rejoinder filed by the applicant at page 23, an unilateral undertaking has been given by the applicant Smt. Mukti Singha, that any over drawal in salary which is detected in future may be recovered. Such undertaking at Annexure 'D' of the Rejoinder is extracted as such :

“UNDERTAKING

I hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the government either by adjustment against future payments due to me or otherwise.

Signature : Sd/-
 Name : Mukti Singha
 Designation: Chief Matron.”

Recently the Hon'ble Apex Court in **Civil Appeal NO. 3500/06 in High Court of Punjab & Haryana & Ors. - Appellant -vs- Jagdev Singh -**

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Respondents, has pronounced a judgment dated 29.7.2016, covering a **retired employee**, relevant extract of which is as follows :

“9. The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.

10. In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc¹. this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law:

“(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.” (emphasis supplied).

11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12. For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years.

13. The judgment of the High Court is accordingly set aside. The Civil Appeal shall stand allowed in the above terms. There shall be no order as to costs.”

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In such view of the matter going by the judgment of the Hon'ble Apex Court we are constrained to abide by such order of the Apex Court and hence decide to arbitrate on merit the instant OA.

7. Issues to be decided in this OA -

- i) Whether the benefits of MACP can be extended beyond the hierarchy of the posts in the cadre and can be more than the Grade Pay of promotional post;
- ii) Whether the case of Delhi Nurses Union can be applied to the applicant who belongs to the Eastern Railway;
- iii) Whether the respondents have correctly taken note of the RBE 142/12 of the Railway Board;
- iv) Whether recovery can be made from the over drawn salary of the applicant.

8(a) **Issue No. (i) - Whether the benefits of MACP can be extended beyond the hierarchy of the posts in the cadre and can be more than the Grade Pay of promoted post.**

This issue has been decided by a Division Bench of this CAT in OA 598/14 (Mitali Ghosh -vs- UOI & Ors.) filed on 29.4.14 by its order dated 20.4.15, the relevant extracts of which is reproduced hereunder for ready reference :

"The applicant prays for quashing of railway Board's Circular date 13.12.2012, 30.7.2013 and 16.9.2013 (Annexure A/1 series) wherein there was clarification regarding working out of 3rd Financial Upgradation under MACP scheme. The applicant has further prayed to direct the respondents to allow her Grade Pay of RS.6600/- as she has completed 30 years of regular service. The applicant's case in short runs as follows :

The applicant was initially appointed as a Staff Nurse and was promoted to the post of Nursing Sister and subsequently promoted to the post of Chief Matron in the Grade Pay of Rs.5400/- After completion of 10 years of continuous service in the promotion post, the applicant was granted 3rd MACP in the Grade Pay of Rs.6600/-. The hierarchical structure of the nursing cadre along with respective Grade Pay runs as under :

Sl.No.	Designation	Pay Band	Grade Pay
1	Staff Nurse	PB-2	Rs.4600/-
2	Nursing Sister	PB-2	Rs.4800/-
3	Matron	PB-3	Rs.5400/-
4	Chief Matron	PB-3	Rs.5400/-

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5	Asstt. Nursing Supdt.	PB-3	Rs.5400/-
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Further case of the applicant is that her pay was refixed in terms of Railway Board's order dated 13.12.2012 and financial upgradation which was granted to her was withdrawn and Grade Pay was fixed to Rs.5400/- . The grievance of the applicant is that since the MACP Scheme which came into effect from 1.9.2008 provides for 3rd Financial Upgradation counted from direct entry grade on completion of 10, 20 and 30 years of service respectively, the said Grade Pay of Rs.6600/- was rightly granted to the applicant after completion of 30 years of regular service and was illegally withdrawn.

Respondents have contested the case by filing a written statement. According to the respondents the applicant who was appointed as a Staff Nurse on 27.2.89 was promoted as Nursing Sister w.e.f. 15.12.1995 and was subsequently posted as Matron. Further case of the respondents is that the applicant was granted 3rd Financial Upgradation in the next higher Grade Pay of Rs.6600/- along with similarly circumstanced Chief Matrons on completion of 10 years of regular service in the same Grade Pay of RS.5400/- in PB-3. According to the respondents, in terms of para 8 of Board's policy on MACP Scheme dated 10.6.2009 (Annexure R/1), 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. Further case of the respondents is that since employees earn promotions as per their cadre hierarchy and though promotional post is in the same Grade Pay is not a case of stagnation but a case of promotion in the same Grade and therefore, not entitled for financial upgradation under the Scheme. Further case of the respondents is that receiving references from different Railways, the Railway Board in consultation with DOP&T the nodal Department of the Government, on MACP Scheme issued a clarification on 13.12.2012 (Annexure R/2) **clarifying how Grade Pay in feeder cadre and promotional cadre is to be made an clarified that financial upgradation under ACP/MACP Schemes cannot be to higher Grade Pay than what to be allowed to an employee on his normal promotion and in such financial upgradation under MACP Scheme same Grade Pay would be granted.** According to the respondents that under MACP for the cadre of Chief Matron having Grade Pay of RS.5400/- in PB-3 her pay should be fixed by adding one increment @ 3% in the same Grade Pay of Rs.5400/- since promotional hierarchy in the next Grade Pay of Chief Matron being Assistant Nursing Officer, which has the same Grade Pay of Rs.5400/- (PB-3). Further case of the respondents is that on receipt of clarification notices were issued to Chief Matrons vide Office Order date 30.7.2013 (R/3) along with applicant, Smt. Mitai Ghosh, who were allowed higher Grade Pay of Rs.6600/- on a wrong interpretation of financial upgradation though they were actually eligible for financial upgradation in the Grade Pay of Rs.5400/- . Further case of the respondents is that pay of the applicant was refixed in the Grade Pay of Rs.5400/- by granting one increment @ 3% on her pay and since substantial amount have been paid to her along with other Chief Matron in the Division recovery of the excess amount was effected from the month of November, 2013 in suitable equal increments with a view to reduce their hardship. Further case of the respondents is that some other Chief Matrons had filed OA No. 350/00129/2014 wherein this Tribunal vide order dated 25.2.2014 (Annexure R/6) had directed to refer the matter to the Railway Board which is the

Apex Body for suitable clarification and the Railway Board vide letter dated 8.5.2014 (Annexure R/7) concluded that the case of the applicant's category is not a case of merger of grades of Chief Matrons and Assistant Nursing Officer but a feeder and promotional post lying in the same grade Pay s per their promotional hierarchy and their case is covered by instructions covered in Para 8 of Board's letter dated 10.6.2009 and instructions dated 13.12.2012. The main contention of the respondents is that benefit under MACP Scheme cannot be allowed in a higher Grade Pay which one would not have got even on getting promotion and since inadvertently due to wrong fixation of paying excess amount was paid to the applicant, it was suitably deducted.

Before delving into the contentious issue the clarifications given by Government of India, **Ministry of Railways (Railway Board) dated 13.12.2012 need to be quoted.**

The General Manager/OSDs/CAO(R)
All Indian Railways & PUs
(As per mailing list)

Sub:-Grant of financial upgradation under MACP Scheme-Clarification reg.

References have been received from Zonal Railways seeking clarification as to what Grade Pay would be admissible under MACP Scheme to an employee holding feeder post in a cadre where promotional post is in the same Grade Pay. The matter has been examined in consultation with Department of Personnel & Training (DoP&T), the nodal department of the Government on MACP Scheme and it is clarified that ACP/MACP Schemes have been introduced by the Government in order to mitigate the problems of genuine stagnation faced by employees due to lack of promotional avenues.

Thus, financial upgradations under ACP/MACP Schemes CANNOT be to higher Grade Pay than what are be allowed to an employee on his normal promotion. In such cases financial upgradation under MACP Scheme would be granted to the same Grade Pay.

Ld. Counsel for the applicant has placed reliance on a decision of the Hon'ble High Court of Allahabad dated 19.7.2013 passed in Writ Application NO. 18244 of 2013 wherein their Lordships observed that 'Post of Senior Goods Guard and Passenger Guard have the same grade of pay and movement of a Senior Goods Guard to the post of Passenger Guard is only a lateral induction and not a promotion, all the private respondents would be taken to have got only one financial upgradation and as per MACPs, they were entitled to two more financial upgradations.'

Here the case is completely different. There is no dispute about the fact that the post of Assistant Nursing Superintendent is a promotion from Chief Matron. Had it not been so both the posts would have been merged as had been done in the cause of Chief Matron cadre earlier. The clarification that financial upgradation under the MACP Scheme cannot be a higher Grade Pay than what can be allowed to an employee on his normal promotion. After the 6th Pay Commission there was never any challenge why there was same Pay Band and same Grade Pay for Chief Matron and Assistant Nursing Superintendent. It is for the Government and the Department to accept or not to accept such recommendations.

If Chief matrons will be granted Grade Pay of Rs.6600/- as claimed by the applicant in that even persons who are promoted to the post of Assistant Nursing Superintendent will get Rs.5400/- whereas persons not getting promotion would get higher Grade Pay. This is not a desirable situation. To make it even simpler, it may be stated at the cost of repetition that since there is no promotional avenues or ladder after the post of Assistant Nursing Superintendent, no higher Grade Pay is admissible to Chief Matron what is offered to Assistant Nursing Superintendent. This Tribunal neither can create a cadre nor a Pay Scale or Pay Band or Grade Pay. **Since there is nothing wrong in the approach of the DOP&T or Railway Board in giving such circular no interference is called for.** It is further clarified that this Tribunal cannot direct the respondents to give higher Pay Band or Grade Pay to a particular post as it is the prerogative of the employer.

Coming to the question of recovery it may be clarified that the Hon'ble Supreme Court in the case of *Chandi Prasad Uniyal -vs- State of Uttarakhand reported in AIR 2012 SC 2951* have succinctly observed that 'when payments are being effected in many situations without any authority of law, the same can always be recovered barring few exceptions of extreme hardship. And when it is not payers or payees money, it is tax payers money, as it neither belonging to the officers who had effected overpayment nor that of the recipient, and once an excess payment has been made due to bonafide mistake, the Government Officer have every right to recover the same.'

The OA being devoid of merits is dismissed. No costs."

There is nothing on record that the above judgment has been reversed in review by this Bench or set aside by any higher forum and the above order has become final. Judicial discipline does not permit us to change the above order which decided that the MACP benefits cannot be more than Rs.5400 as Grade Pay as ANO (Asstt. Nursing Officer) which is promotional post to Chief Matron carries the Grade Pay of Rs.5400/-.

Accordingly to the question of whether benefits of MACP can be extended beyond the hierarchy of the post in the cadre, the answer can never be other than in the negative.

The Bench of this CAT have held in OA No.598/2014 (supra) that MACP benefit cannot be given at a Grade Pay higher than the promotional posts or beyond promotional hierarchy available in the cadre. This view was upheld by the Hon'ble Delhi High Court in *WP(C) No. 3420/2010 (R.S.Sengar & Ors. -vs- UOI & Ors.)* dated 4.4.2011 wherein it has been held 'to put it pithily the MACP scheme requires

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the hierarchy of Grade Pay to be adhered to and not the Grade Pay in the hierarchy of posts.'

Further paragraph 8 and 8.1 of the said MACP Scheme provides as under :

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 MACP Scheme.

Accordingly we conclude that Grade Pay of the applicant should be fixed at Rs.5400/- from 1.9.2008 and not Rs.6600/-. Our conclusion above is also supported by the order of the Madras Bench dated 29th June 2015 in OA No. 310/00514/2014 & MA 310/00445/2014 and MA 310/00315/2015 (V.Subhashini & Anr. -vs- UOI & Ors.). In the above case, the Madras Bench of the Tribunal have held that the third financial upgradation to the Grade Pay of Rs.6600/- is not permissible.

The relevant portion of which is extracted hereinbelow :

On perusal of the records, it is seen that the applicants were at the first instance granted the 3rd Financial Upgradation in Pay Band Rs.15600-39100(PB-3) with Grade Pay of Rs.6600/- under MACP Scheme w.e.f. 01.09.2008 by the 3rd respondent and under a wrong notion, the same has been withdrawn by order dated 12.07.2013 which is impugned in this OA and the applicants' Grade Pay has been revised downward and recovery of overpayment ordered. We are in agreement with the contention of the respondents that for Chief Matrons with GP-5400/- in PB-3 (Non-Gazetted) the next promotional post is Assistant Nursing Officer in same Grade Pay of Rs.5400/PB-3(Gazetted) and hence the concerned employees have to be considered for 3rd Financial Upgradation to the same Grade Pay Rs.5400 in PB-3 in terms of Board's letter dated 13/12/2012 and increase in pay by 3 percent as is applicable in the normal promotions. Hence the decision in the OA No.141/2012 of the Principal Bench is not applicable in the present case, apart from that the Hon'ble Supreme Court has also not gone into the merits of the case and at the admission stage itself rejected the SLP filed by the concerned department and the same cannot be cited as precedence. Further, it is submitted that as per the policy framed by the Ministry of Railways through letter No.PC-VI/2008/1/RSRP/1 dated 22.09.2008 (RBE No.124/2008) and subsequent clarifications, the Chief Matrons are placed in PB-3 with Grade Pay Rs.5400 and their next promotional post, as per Annexure R-2 documents, is to the post of Assistant Nursing Officers in PB-3 with Grade Pay Rs.5400. The MACP Scheme has been introduced in order to mitigate the problems of genuine

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stagnation faced by employees due to lack of promotional avenues and therefore Financial Upgradations under this Scheme is to be given either in the next Grade Pay in the hierarchy of Grade Pays or to the next promotional post and in no case it can be given beyond the next promotional post. Granting of benefit higher than their promotional post amounts to grant of double benefit. Therefore, granting of MACPS benefit to the applicants Chief Matrons in PB-3 with Grade Pay Rs.5400 to PB-3 with Grade Pay Rs.5400 is in order and needs no revision. The respondents relied on the citation in (2015) 1 SCC (L&S) 384 (2014) 13 SCC 296 Secretary, Government (NCT of Delhi) & Others vs. Grade-I Dass Officers' Association & Others, wherein para 14 reads as follows:-

14. In view of the 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 the 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. As a corollary, such claim of the respondents must be rejected on the ground that persons having better claims on actual promotion could be fitted only in the promotional post of Grade II (Group B) of DANICS i.e. Rs.6500-200-10,500 whereas the respondents, on their claims being accepted, would get much higher pay scale of Rs.10,000-325-15200 available only to Grade I (Group A) in DANICS. Such a situation would be violative of rules of fairness and Articles 14 and 16 of the Constitution of India. The claim of the respondents had to be rejected as was done by the Tribunal in view of Clause 7 of the ACPS read with other relevant clauses as well as on the basis of the aforesnoticed ground. Fairness on the part of the State is a constitutional obligation and hence a pay scale, which regularly promoted employee earlier belonging to Grade I (DASS) could not get due to established hierarchy for promotion, cannot be granted to those like the respondents on the plea that the financial upgradation to which they are found entitled as per existing hierarchy is too meagre. In case the respondents' claim was to be allowed on the ground accepted by the High Court that financial upgradation must be real and substantial, in case of regular promotion in future, employees like the respondents would have to be reduced in their pay scale because actual or functional promotion as per established hierarchy can be only on a post in Grade II (Group B) in DANICS.

The above citation relied on by the respondents squarely applies to the case on hand. Hence, in view of the above, we are of the opinion that the OA is liable to be dismissed."

Thus in the hierarchy of the Nurses in the Eastern Railway where ANO which is a promotional post of Chief Matron has a Grade Pay of Rs.5400/- none can avail of Grade Pay of Rs.6600/- which does not exist in their hierarchy.

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(b) **Issue No. (ii) - Whether the case of Delhi Nurses Union can be applied to the applicant who belongs to the Eastern Railway.**

In order to strengthen the arguments, the ld. Counsel for the applicants has taken the support of the decision of the Hon'ble High Court of Delhi dated 24.8.12 rendered in the case of Union of India -vs- Delhi Nurses Union (Regd.) & Anr. In WP(C) No. 5146/2012. The direction in the above judgment cannot be taken assistance of in the present cases because the hierarchy in Nursing Cadre for the Dehi Nurses Union, the Nurses of which are employed in the Central Government Hospitals is different from the hierarchy of the Nurses of the Eastern Railway. The promotional hierarchy of the Railway Nursing cadre of Medical Department consists of the following :

Staff Nurse	: GP Rs.4600/-
Nursing Sister	: GP Rs.4800/-
Chief Matron	: GP Rs.5400/-
Assistant Nursing Sister	: GP Rs.5400/-

There are no other designation of Nursing Personnel n the Eastern railways. But in Government Hospitals in Delhi there are two other designations carrying GP Rs.6600/- and Rs.7600/-. The designations of structure of Nursing Staff as per Finance Department's Notification dated 29.8.2008 is as under :

Staff Nurse	: GP Rs.4600/-
Nursing Sister	: GP Rs.4800/-
Assistant Nursing Sister	: GP Rs.5400/-
Deputy Nursing Sister	: GP Rs.5400/-
Nursing Superintendent	: GP Rs.6600/-
Chief Nursing Officer	: GP Rs.7600/-

Thus from the post of Assistant Nursing Superintendent and Deputy Nursing Sister, higher posts are available in the hierarchy with Grade Pay of Rs.6600/- and Rs.7600/- whereas, in the present cases hierarchy ends with the post of ANO carrying the GP of Rs.5400/- and as discussed earlier, the benefits of financial upgradation cannot be higher than the benefit available on normal promotions.

(c) **Issue No. (iii) - Whether the respondents have correctly taken note of the RBE 142/12 of the Railway Board.**

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The Railway Board's order RBE 142/12 dated 13.12.12 is extracted below :

"GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
Railway Board

S.No.PC-VI/307
No.PC-V/2009/ACP/2

RBE No.142/2012
New Delhi, dated 13/12/2012

The General Manager/OSDs/CAO(R)
All Indian Railways & PUs
(As per mailing list)

Sub:-Grant of financial upgradation under MACP Scheme-Clarification reg.

References have been received from Zonal Railways seeking clarification as to what Grade Pay would be admissible under MACP Scheme to an employee holding feeder post in a cadre where promotional post is in the same Grade Pay. The matter has been examined in consultation with Department of Personnel & Training (DoP&T), the nodal department of the Government on MACP Scheme and it is clarified that ACP/MACP Schemes have been introduced by the Government in order to mitigate the problems of genuine stagnation faced by employees due to lack of promotional avenues. Thus, financial upgradations under ACP/MACP Schemes CANNOT be to higher Grade Pay than what are be allowed to an employee on his normal promotion. In such cases financial upgradation under MACP Scheme would be granted to the same Grade Pay.

This issues with the concurrence of the Finance Directorate of the Ministry of Railways.

Hindi version is enclosed.

(N.P. Singh)
Dy.Director/Pay
Commission-V
Railway Board
New Delhi, dated 13/12/2012"

Our mind is redolent and reminiscent of the case of *Railway Board & Ors. -vs- P.R.Subramaniyam & Ors. reported in 1978 Vol.1 SCC 158*. In this case the Hon'ble Apex Court declared that the orders issued by the Railway Board are of general application to non-gazetted railway servants and are treated as rules having provision to Article 309 of the Constitution of India. It is further clarified in para 3 which reads as under :

"3. In the Indian Railway Establishment Code, Volume I are the Rules framed by the President of India under Article 309 of the Constitution. Contained in the said Code is the well known Rule 157 which authorises the Railway Board, as permissible under Article 309, to have "full powers to make rules of general

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application to non gazetted railway servants under their control". The Railway Board have been framing rules in exercise of this power from time to time. No special procedure or method is prescribed for the making of such rules by the Railway Board. But they have been treated as rules having the force of rules framed under Article 309 pursuant to the delegated power to the Railway Board....."

Hence the RBEs have the sanctity of the provisions of Article 309 of the Constitution and the Railways have correctly applied the principle embodied in such RBE.

(d) **Issue No. (iv) - Whether recovery can be made from the over drawn salary of the applicant.**

As pointed out earlier order by this Bench, in OA 598/14 it was decided that such recovery can be made, relevant extracts of which is given again at the cost of repetition :

"Coming to the question of recovery it may be clarified that the Hon'ble Supreme Court in the case of ***Chandi Prasad Utyal -vs- State of Uttarakhand reported in AIR 2012 SC 2951*** have succinctly observed that 'when payments are being effected in many situations without any authority of law, the same can always be recovered barring few exceptions of extreme hardship. And when it is not payers or payees money, it is tax payers money, as it neither belonging to the officers who had effected overpayment nor that of the recipient, and once an excess payment has been made due to bonafide mistake, the Government Officer have every right to recover the same."

Also the Hon'ble Delhi High Court in the matter of ***Jagdish Prasad & Ors. -vs- University of Delhi & Ors. [WP(C) 3583/07]*** decided on 15.4.15, ;while dealing with the issue of recovery from Class IV employees- has discussed the decision of Hon'ble Court in ***Rafiq Masih*** and in para 15 the Hon'ble Delhi High Court has held as under :

"15. No doubt, in para 12 of the judgment in the case of Rafiq Masih (supra), the Supreme Court has laid down the categories of persons from whom recoveries cannot be made, however, these observations with respect to whom the recoveries cannot be made have necessarily to be read with the binding ratio in para 11, that if a mistake is discovered within five years then recoveries can be effected and assuming that the mistake was not discovered within five years even thereafter the mistake can be corrected i.e mistake can be rectified by stopping future payments and which were being wrongly made earlier....."

9. We have already pointed out earlier the latest order on the matter of recovery given by the Hon'ble Apex Court in ***Civil Appeal NO. 3500/06 in***



High Court of Punjab & Haryana & Ors. - Appellant -vs- Jagdev Singh -

Respondents, where it has been held that when an undertaking has been given by the applicant even if he/she retires then the respondent authorities shall recover the over drawn amount in suitable instalments.

10. Hence the impugned order dated 23.8.2013, and 12.9.2013, relevant portion of which for applicant Smt. Mukti Singha are extracted below, calls for no interference from our end -

EASTERN RAILWAY

No.MED/MACP/Matron/E-21

Sealdah dt. 23.8.13

OFFICE ORDER

In terms of RBE No. 142/12 and subsequent clarification made by Rly. Board vide his letter No. PC-V/2009/ACP/20/CLW Dt.5.3.13 addressed to GM(P).CLW/CRJ, Pay of following Chief Matron under MD/BPSH/SDAH, who have been considered for 3rd financial upgradation under MACP scheme in Grade Pay Rs.6600/- in PB-3 vide o/o No. MED/MACP/Matron/E-21 dt. 18/8/10 is now refixed in same GP, i.e. Rs.5400/- in PB-3 as under :

Sl.	Name	Design/ Stn	R/Pay	Pay already fixed in Rs.6600/- in PB-3 w.e.f.	Pay now to be refixed in GP Rs.5400/- in PB-3
7	Mukti Singha	Chief Matron/ BRSH	Rs.25700/-	Rs.27680/- w.e.f. 1.9.08 Rs.28510/- w.e.f. 1.7.09 Rs.29370/- w.e.f. 1.7.10 Rs.30260/- w.e.f. 1.7.11 Rs.31170/- w.e.f. 1.7.12 Rs.32110/- w.e.f. 1.7.13	Rs.26480/- w.e.f. 1.9.08 Rs.27280/- w.e.f. 1.7.09 Rs.28100/- w.e.f. 1.7.10 Rs.28950/- w.e.f. 1.7.11 Rs.29820/- w.e.f. 1.7.12 Rs.30720/- w.e.f. 1.7.13

This has got approval of the competent authority.

(S.Chakraborty)
Asstt. Personnel Officer (ESM)
Eastern Railway, Sealdah."

EASTERN RAILWAY

No.SB/Misc/MED/E-21

Sealdah, Dated 12.9.2013

Medical Director,
B.R.Singh Hospital,
Eastern Railway, Sealdah.

Sub : Recovery of Over payment of MACP

The following staff of Medical Department were financially upgraded on GP Rs.6600/- from GP Rs.5400/- under MACP Scheme. Now as per Rly. Board's letter No. PC-V/2009/ACP/20/CLW dt 5.3.13 & RBE No. 142/12 they are only entitled for MACP on GP Rs.5400/- instead of GP Rs.6600/-.

Accordingly their pay has been calculated on GP Rs./5400/- and found that the following over payment of Pay has been involved against each of their names, which are going to be recovered in instalments.

Sl.No.	Name & Designation	Over payment of amount to be recovered
2	Mukti Singha, Chief Matron/BRSH, PF No. 09264978 BU 09334	Rs.1,38,162=00

The staff concerned may kindly be communicated immediately under clear signature for acknowledgement. The copy of the same may kindly be communicated to this office to keep on records.

(S.Chakraborty)
Asstt. Personnel Officer (ESM)
For Divisional Railway Manager/E. Railway, Sealdah."

11. Going through the above facts and the various orders of this Bench of CAT, High Courts and the Hon'ble Apex Court, we find that there is no merit in this case and hence deserves to be dismissed and is accordingly dismissed. No costs.
12. Interim order continuing from 3.10.13 is hereby forthwith vacated.

(JAYA DAS GUPTA)
MEMBER (A)

(A.K.PATNAIK)
MEMBER (J)

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