

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

**MISCELLANEOUS APPLICATION NO.451/2018 IN
CONTEMPT PETITION NO.170/00019/2018 IN
ORIGINAL APPLICATION NO. 170/00429-00445/2016**

DATED THIS THE 16th DAY OF JANUARY, 2019

**HON'BLE DR.K.B. SURESH, JUDICIAL MEMBER
HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

Sri.P.S.Rajashekar
S/o.P.Sharanappa
Aged 49 years
Working as Pharmacist
BWFF Dispensary, Harihar
R/o 1966/80, 9th Cross, S.S.Layout
Davangere-577004.
& 17 Others

... Petitioners

(By Advocate Shri V.V.Balan)

Vs.

1. Shri K.Shekar
Welfare & Cess Commissioner
Labour Welfare Org.
3rd Cross, 3rd Main
2nd Stage
Bangalore-560002.
2. Shri Rajit Punhani
Director General/JS-LWO
Jaisalmer House
Mansingh Road
New Delhi-110011.
3. Smt.M.Sathiyavathi
Secretary
Ministry of Labour & Employment
Shram Shakthi Bhawan
Rafi Marg
New Delhi-110001.

...Respondents

(By Advocates Shri M.Rajakumar)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (A))

The Contempt Petition has already been closed by this Tribunal vide order dtd.25.06.2018 which is as follows:

"This Contempt Petition has been filed by the petitioner alleging non-compliance of the order dtd.27.04.2017 passed by this Tribunal in OA.No.429-445/2016. The order of the Tribunal in the said OAs was passed in terms of a decision earlier taken by this Tribunal in OA.No.418 & 419/2016 and directed as follows:

"3. Both sides submits that this OA can be disposed of in terms of relief granted in the above said OA. Therefore, we are of the view that the applicants who were appointed as Pharmacists are entitled to the benefits available to the Pharmacist cadre. Hence they shall also be entitled to get the benefits of the revised pay structure for the Pharmacists cadre in terms of the OM dated 18.11.2009, i.e. entry grade of Grade Pay of Rs.2800/- and non-functional upgradation after 2 years of service in the entry grade. We, therefore, direct the respondents to grant the revised pay structure w.e.f. 01.01.2006. The Respondent No.2 shall pass an appropriate order granting the financial benefits to the applicants within a period of two months from the date of receipt of a copy of this order."

1. In the Contempt Petition which lacks clarity, the petitioners mentioned that the said order has not been complied with.
 2. During the hearing, the Learned Counsel for the respondents submitted a memo showing compliance of the order and produced an office order dtd.06.06.2018 showing the grant of next higher grade having grade pay of Rs.4200 in respect of Pharmacists who are still in the entry grade of Rs.2800. All the other persons have already got the grade pay of Rs.4200 as on 01.01.2006.
 3. On detailed consideration of the matter, we are of the view that there is no instance of any willful violation of the order passed by the Tribunal and hence the Contempt Petition stands closed. Notices issued are discharged. No order as to costs."
2. The Learned Counsel for the petitioner has filed an MA.451/2018 on 19.09.2018 along with rejoinder contending that the respondents have not fully complied with the order passed in OAs.No.429-445/2016 and hence prayed for a direction on the rejoinder. He submits that when he filed an affidavit on 18.6.2018, the CP was posted on 19.06.2018 on which day the matter was reserved for orders but when the copies were applied no orders on the rejoinder was passed. He filed written argument note in MA.451/2018.
3. The respondents have filed counter objection to the MA.No.451/2018 and

submit that the petitioners are appointed in the dispensaries as well as hospitals as Pharmacists to help the Medical Officers concerned to render treatment to the workers of Beedi/Cine/Mine and to their dependents. They submit that the petitioner Shri P.S.Rajashekar was appointed as Pharmacist on 04.03.1987 and posted at Kariganur Dispensary. On completion of two years probationary period, he was confirmed w.e.f. 4.3.1989 in the pay scale of Rs.1350-2200. They submit that when the Pharmacists appointed in the organization, the Grade Pay system was not prevailing and the organization did not have timely career progression system. On implementation of 5th CPC, the petitioner Shri Rajashekar was granted financial upgradation under ACP Scheme from the pay scale of Rs.4500-7000 to Rs.5000-8000. When the OA.429-445/2016 filed for seeking to implement the recommendations of 6th CPC Fast Track Committee(FTC) which was constituted to suggest suitable measures to improve the career aspects of the Pharmacists working in various departments of Govt. of India and other ancillary reliefs, all the other Pharmacists except Sri Sampath Kumar, Sri D.C.Suresh, Sri A.Shiva Kumar and Sri B.Srinivas have availed the benefit of ACP on completion of 12 years of service on the date of introduction of the said Scheme w.e.f. 9.8.1999.

4. The respondents have given comparative table of 4th and 5th CPC in regard to scales of pay of Pharmacists of the various services/organization of the Govt. of India as per which the pay scale of Rs.1350-2200 wherein the petitioner was placed is equivalent to Rs.5200-20200 in the 6th CPC with Grade Pay of Rs.2800 and the scale of pay of Rs.1400-2600 was equal to pay scale of Rs.9300-34800 with GP of Rs.4200. The petitioner was drawing pay of Rs.12,370 in the pay band 2 of GP Rs.4200 as on 1.1.2006. The 5th CPC had recommended the revised qualification of 10+2+2 years' diploma with 3 months training and registration so as to become eligible for the pay scale of

Rs.1400-2600 w.e.f. 1.1.1996. The applicant who was appointed on 4.3.1987 confirmed w.e.f. 4.3.1989 was in possession of qualification of 10th plus 2 year diploma in pharmacy and hence his claim for higher scale of Rs.1400-2600 equivalent to GP Rs.4200 was not at all allowed to him due to non-possessing the required qualification. Whereas, the petitioner continue to claim the said benefit in OA.No.429-445/2016 with the misconception and by misleading the Court. The Tribunal while dealing with the case, did not order any specific benefit on the claim of the applicants but only directed to grant the benefits of Fast Track Committee(FTC) to the applicants as informed vide OM dtd.18.11.2009 and the office order dtd.31.12.2015 which is being implemented in toto.

5. The respondents further submitted that on implementation of the MACP Scheme, the incumbents including the petitioner were given financial upgradation on completion of 10 years of service w.e.f. 1.9.2008. Thus the pay scale of the petitioner got enhanced periodically viz. 1st ACP on 09.08.1999 in the pay scale of Rs.5000-8000 equivalent to PB 2 with GP Rs.4200, 2nd MACP w.e.f. 1.9.2008 in PB 2 with GP Rs.4600 and 3rd MACP w.e.f. 4.3.2017 in PB 2 with GP Rs.4800 in consonance with the recommendation of 6th CPC as well as FTC and availed all the entitled financial upgradation as on date. Therefore, claiming the same benefits w.e.f. 4.3.1989, which was neither recommended nor approved by the pay commission, FTC or the Govt. of India is only an illusion and to wrong perception and interpretation on the part of the petitioner, about the recommendation of the FTC.

6. They further submit that the Tribunal while considering the memo filed by the department in contempt petition took its view that the CP lacks clarity and

hence closed as there is no willful violation of the order passed in OA.No.429-445/2016. The MA filed for recalling the said order in CP is impermissible under law as the department had already extended the benefits as per the order in OA. If the applicants are really aggrieved on compliance report submitted by the respondents, they can challenge the same by filing fresh OA instead of filing the MA recalling the order in CP.

7. We have heard the Learned Counsel for both the parties and perused the records placed before us. It is apparent that the petitioner has got three upgradations as has been clearly made out in para-5 above. We find no reason to recall the order issued in CP.19/2018(OA.No.429-445/2016) dtd.25.06.2018. The applicant is under the wrong impression of trying to get the recommendation of the Fast Track Committee(FTC) implemented with retrospective effect whereas the said recommendations have been in operation only since 01.01.2016 and there is no case for considering it otherwise. The MA.451/2018 is therefore dismissed. No costs.

(C.V. SANKAR)
MEMBER(A)

(DR. K.B. SURESH)
MEMBER (J)

/ps/

Annexures referred to by the petitioners in MA.No.451/2018 in CP.No.19/2018

Annexure-MA1: Judgment copy of the order made in CP.19/2018
Annexure-MA2: Orders dtd.11.6.2018

Annexure-MA3: Rejoinder with affidavit

Annexures with counter reply:

Annexure-CO1: Copy of the office order dated 06.06.2018

Annexure-CO2: Copy of the order dtd.25.6.2018 in CP.19/2018
