

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.1256 of 2013

Reserved on: 15.04.2019

Pronounced on: 26.04.2019

Between:

1. R. Harishankar, S/o. Sri R. Durgaiah,
Aged about 50 years, Occ: Pharmacist/ Hospital,
Ordnance Factory Medak, Yeddumailaram, Medak Dt.-502205,
R/o. Q. No. 4032, Ordnance Factory Estate,
Yeddumailaram, Medak Dist. Pin: 502205.
2. G. Bhujanaga Raju Gupta, S/o. Sri G. Yellaiah Gupta,
Aged about 50 years, Occ: Pharmacist/ Hospital,
Ordnance Factory Medak, Yeddumailaram, Medak Dt.-502205,
R/o. 1-88, Vemukunta, Chanda Nagar, RR Dist.
3. J. Chandra Mohan, S/o. Sri J.J. Carey,
Aged about 50 years, Yeddumailaram, Medak Dt.-502205,
R/o. 4018, Ordnance Factory Estate,
Yeddumailaram, Medak Dist. Pin: 502205.
4. G. Satyanarayana, S/o. Sri G. Mannaiah,
Aged about 47 years, Occ: Pharmacist/ Hospital,
Ordnance Factory Medak, Yeddumailaram, Medak Dt.-502205,
R/o. MIG-16, APHB Colony, 5-50,
Pothi Reddy Palli, Sanga Reddy, Medak.
5. K. Madhusudhan, S/o. Sri K. Ramulu,
Aged about 44 years, Occ: Pharmacist/ Hospital,
Ordnance Factory Medak, Yeddumailaram, Medak Dt.-502205,
R/o. H. No. 308, Srinivasam Apartments,
Vidhya Nagar, Sanga Reddy, Medak Dist.
6. T. Sreenivas, S/o. Sri T. Gauraiah, aged about 38 years,
Occ: Pharmacist/ Hospital, Ordnance Factory Medak,
Yeddumailaram, Medak Dt.-502205,
R/o. Q. No. 3783, Ordnance Factory Estate,
Yeddumailaram, Medak Dist. Pin: 502205.

... Applicants

And

1. Union of India, Rep. by its
Director General & Chairman,
Ordnance Factory Board,
Government of India, Ministry of Defence,
10-A, SK Bose Road, Kolkatta – 700 001.

2. The General Manager,
Ordnance Factory, Ministry of Defence,
Yeddu-mailaram, Medak Dist, PIN – 502 205.

... Respondents

Counsel for the Applicants ... Mr. K. Ram Murthy
Counsel for the Respondents ... Mrs. K. Rajitha, Sr. CGSC

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. OA is filed for withdrawing MACP benefit granted.
3. Brief facts of the case are that the applicants working in the respondents organisation as pharmacists were granted MACP in the grade pay of Rs.4600 as 1st MACP and Rs.4800 grade pay as 2nd MACP, as per recommendations of the Fast Track Committee on 28.8.2010. Instructions were issued by the 1st respondent vide letter dated 4.10.2010 and by DG Ordnance Factories (DGOF) vide letter dated 25.8.2009 that the upward movement of the pharmacists from the grade pay of Rs.2800 to the Non functional grade of Rs.4200 shall be treated as placement and not as promotion. The same instruction was reiterated by the DG Defence Accounts(DGDA) vide his letter dated 29.4.2011. Despite such instructions 2nd respondent has issued impugned orders dated 30.9.2013 and 8.10.2013 reducing the grade pay of the applicants to the immediate lower grade pay without issue of any notice. Aggrieved, OA has been filed.
4. Contentions of the applicant are that the grade pay has been reduced without any notice. The eligible grade pay was granted by the respondents after obtaining concurrence of the Ministry of Finance. The grade pays referred to were paid based on the recommendations of the Fast Track committee in pursuance of 5th/6th CPC recommendations. 1st respondent is not competent to

overrule the G.O.I instructions. The very spirit of MACP has been violated by reducing the grade pay already granted.

5. Respondents inform that it is true that the DGOF and DGDA have issued instructions stating that the movement of pharmacists from the grade pay of Rs 2800 to the grade pay of Rs 4200 was ordered to be treated as placement and not as a promotion. Consequently Pharmacists in the grade pay of Rs 4200 were granted the first financial up gradation to the grade pay of Rs 4600 and the 2nd financial up gradation to the grade pay of Rs 4800 under MACP scheme. However, DOPT has clarified that the financial up gradation from grade pay of Rs 2800 to Rs 4200 has to be treated as a financial upgradation under MACP. Aggrieved, the All India Ordnance Factories Para Medical Staff association on moving the Hon'ble Principal Bench of this Tribunal in OA No 359 /2013 no stay was granted but the recovery was stayed to provide interim relief. Therefore no recovery is being affected.

6. Heard both the counsel and perused the documents along with the material papers.

7. I) As is evident from the facts of the case, respondents did allow the 1st MACP of Rs 4600 and the 2nd MACP of Rs 4800. However, DOPT vide letter dated 4.7.2012 has clarified as under:

“In accordance with the provisions of the MACP scheme, every financial up gradation including non functional grades are to be treated as an offset against one financial up gradation under the scheme. Accordingly, non functional grade granted to Pharmacist (entry grade with GP Rs 2800) to the next GP of Rs 4200 in PB-2 on completion of 2 years of service in the GP of Rs 2800 in PB-3 has to be treated as 1st MACP.”

II) DOPT is the nodal Ministry for implementing MACP and hence its instructions are binding. Therefore, respondents organisation in order to abide by the DOPT clarification has issued notice to the applicants for recovery of excess amount paid. Nevertheless, due to the interim orders of the Hon'ble Principal Bench in OA 359/2013 no recovery has been affected. Ld. counsel for the respondents has submitted a copy of the order dismissing the OA 359/2013 on 20.12.2016 by the Hon'ble Principle Bench. It is clear from the orders of DOPT that the movement from the grade pay of Rs 2800 to the grade pay of Rs 4200 by the applicants has to be treated as 1st MACP. Hence the 2nd MACP will be to grade pay of Rs 4600 and the 3rd to grade pay of Rs 4800. Respondents did act as per instructions of DOPT which are final. It is pertinent to mention at this juncture that the Pharmacists (entry grade) in the erstwhile pay scale of Rs 4500-7000 were granted Grade pay of Rs 2800 in Pay Band I. The posts of Pharmacists Grade II (pre-revised Rs 5000-8000) and Pharmacists Grade I (pre-revised Rs 5500-9000) were merged and such re-designated Pharmacists (Non-functional grade) were granted the grade pay of Rs 4200 (PB-2) and Pharmacists (Entry grade), after two years of service in the grade pay of Rs 2800 were granted PB-2 with grade pay of Rs 4200. The pharmacists in the entry grade of Rs 2800 were placed in the grade pay of Rs 4200 after 2 years in a time bound manner irrespective of availability of vacancy. Hence it was construed to be a placement done in a time bound manner without going through the usual process prescribed for promotion. As it was not considered as a promotion the grant of MACP commenced from the grade pay of Rs4200 with 1st MACP as Rs 4600, 2nd as Rs 4800 and 3rd as Rs 5400. However, DOPT memo referred to has clarified that the pharmacists being placed in the grade pay of Rs 4200 from the grade pay of Rs 2800 has to be treated to be 1st MACP and hence the 2nd MACP

would be for grade pay of Rs.4600 and 3rd MACP for Rs.4800. Accordingly respondents have reduced the grade pay of the applicants which is per rule and there is no infirmity in the same.

III) A similar issue was dealt by this Tribunal in OA1348/2012 wherein it was observed as under:

“The necessity for us to deal with the issue in detail is on account of the fact that identical issue was adjudicated by the Principal Bench of the Tribunal in O.A No 3441/2012. Through its order dated 31.1.2014 the said O.A was allowed. It was held that the benefit as claimed by the applicants therein was permissible in law.

However, the Union of India carried the matter to the Delhi High Court in WP (C) No 8515/2014. Through its judgment dated 9.11.2016, the Delhi High Court had set aside the order passed by the Principal Bench of the Tribunal. The result is that the claim made by the applicants cannot be sustained in law. It is stated that though an S.L.P is filed against the judgment of the Delhi High Court, no stay was granted, except that in the recent past, an order of recovery in a similar case was passed.

As the law stands now, the OA is liable to be dismissed following the judgment of the Delhi High court in WP no 8515/2014. The matter does not simply rest at that. The applicants have been drawing salary in far excess of their entitlement on the strength of the Interim Order passed by this Tribunal in this O.A. Now, the actual emoluments which the applicants were entitled to draw but for the interim order of this Tribunal need to be worked out.”

Further, Hon’ble High Court of Judicature of Andhra Pradesh at Hyderabad, in WPMP No.38824 of 2013 in WP No 31252 of 2013, observed in regard to a similar issue involving the same respondents as under:

“For the aforesaid reasons, there shall be interim suspension as prayed for. However, it is made clear that if any vacate petition is filed by the respondents in all these matters, it is open to the Tribunal to decide the matter on its own merits, without reference to the proceedings before this court.”

In view of the pending S.L.P., observations of the Hon'ble High Court and order of this Tribunal in OA1348/2012, and the rules on the subject, we dismiss the OA. However, the respondents are directed as under:

- i) to work out the salary to be paid to the applicants, in particular, with reference to their pay band and re-fix the emolument as per DOPT order cited, apart from determining the amount paid in excess to the applicant over the period; and
- ii) the recovery of the amount which is found to have been made in excess, shall be deferred till the S.L.P is decided by the Hon'ble Apex Court.
- iii) No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated, the 26th day of April, 2019

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