

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**PATNA BENCH, PATNA**  
**OA/050/00130/15**  
**With**  
**MA/050/00391/17**

Reserved on: 25.01.2019  
Pronounced on: 29.01.2019

**C O R A M**

**HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER**  
**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

1. Awadhesh Kumar, son of Late Ram Lagan Singh, resident of Village- Bhadari, PO- Nalanda, PS- Silao, District- Nalanda.
2. Md. Asid Akhtar, son of Late Mohammad, working as Pharmacist, State Cum Mobile Medical Unit, Patna.
3. Md. Aslam, son of Late Md. Mobin Uddin, Static Cum Mobile Medical Unit, resident of Helajote, PO- Jhajha, Distt.- Jamui.
4. Md. Manowar Alam, Resident of M.S. House, Road No. 23, Aliganj, Distt.- Gaya.
5. Naseem Ahmad, son of Late Md. Tahir Hussain, resident of Dhaka, PO- Dhaka, Dist.- East Champaran.
6. Md. Ekramul Haq, son of Abdul Kanmal, resident if Ghat Nawabh PO- Nawada, Distt. – Samastipur.
7. Amurendra Jha, son of Harinandan Jha, Static Cum Mobile Medical Unit, Bachhwara, Distt.- Begusarai.
8. R.R. Pathak, son of Late M.G. Pathak resident of Sankar Mochan Nagar, PO- Sankat Mochan Nagar, Distt. Jhumri Telaiya, Koderma.
9. Maheshwar Ram, son of Late Bindeshwar Ram, resident of Aganoor, PO- Aganoor, PS- Mahendra, Distt.- Arwal.
10. Ram Sagar Sharma, Late Dwarika Sharma, resident of S.K. Nagar, PO & PS- Motihari, Distt.- East Champaran.
11. Shashi Kant Sushil, son of Shrui Jagdish Prasad Yadav, resident of Murliganj Ward No. 06, PO- Muraliganj, Ward No. 06, Distrcit- Nalanda.
12. Umesh Prasad Singh, son of Late Raghunandan Prasad, resident of Patel Nagar, Naisarai, Biharsharif, Distt.- Nalanda.
13. Devendra Kumar Bharti, son of Late Shiv Prasad Sinha, resident of Bhogipur, PO - Mittan Chak, PS - Punpun, Distt.- Patna.
14. Brij Nandan Prasad, son of Sri Sukhdeo Prasad, resident of Central Hospital, Bihar Sharif, Distt.- Nalanda.

..... Applicants.

- By Advocate: - Mr. S.K. Bariar

-Versus-

1. Union of India through the Secretary, Ministry of Labour and Employment, Jaisalmer House, 26, Man Singh Road, New Delhi.

2. The Under Secretary, Ministry of Labour and Employment, Jaisalmer House, 26, Man Singh Road, New Delhi.
3. The Welfare Commissioner, Ministry of Labour and Employment, Labour Welfare Organisation, House No. 180/A/B, 2<sup>nd</sup> Floor, Road No. 4A, Patliputra Colony, Patna, Bihar.

..... Respondents.

- By Advocate(s): - Mr. M.D. Dwivedi

### **ORDER**

**Per Dinesh Sharma, A.M.:-** The applicants had prayed for the following reliefs under this OA:

“1) The applicant humbly pray that Office Order No. 20/2015 dated 19.01.2015 (Annexure-A/7) may be treated as illegal and be quashed and set aside.

2) The applicants further pray that the respondents be directed to extend the similar benefits after applying the same ratio of judgments with regard to the grant of MACP as granted by the Hon’ble Tribunal vide Order dated 31.01.2014 passed in OA No. 3441/2012.

3) Pass such other direction or directions/order or orders as this Hon’ble Tribunal may deem fit and proper to meet the ends of justice.”

2. The respondents filed their Written Statement denying these claims. They have alleged that no representation from the Pharmacists was received against the order No 4-7/(MACPS)/2009-PCC dated 24 Dec. 2013, by which the provisions of the MACP Scheme were clarified making it clear that “entitlement for grant of MACPS to Pharmacist in the GP of PB-1 Rs. 2800/- is PB-2 Rs. 4200/- (1<sup>st</sup> MACP), PB-2 GP Rs. 4600/- (2<sup>nd</sup> MACP) and PB-2 Rs. 4800/- (3<sup>rd</sup> MACP). Entitlements mentioned vide DGHS order bearing No. G12011/1/2010-CGHSII is not in consonance with the provisions of the

MACPS". They also tried to distinguish this case from the case cited above saying that the case of Pharmacists of CGHS (the subject matter of the OA No. 3441/2012 relied upon by the applicants) was different from Pharmacists at Labour Welfare Organisation, Patna, and also alleged that the matter was not correctly placed before the Hon'ble Judge

3. The decision of the Principal Bench (In OA No. 3441/2012) on which the prayer under this OA was based (hereinafter referred to as simply the decision of the Principal Bench) was overturned by the Hon High Court of Delhi (in Union Of India and Ors. Vs. All India CGHS Employees Association, W.P(Civil) No. 8515/2014, pronounced on 9.11.16). (This was discovered by us later, on examination of the copies of the decisions presented before us during the final arguments). The applicants sought to amend the OA by filing MA/050/00391/2017. In this application, without mentioning anything about the decision of the Hon. High Court, they sought to amend the prayer by adding the following prayer: -

" The applicants (except 13 and 14) further pray that the respondents be directed to grant 1<sup>st</sup> ACP to them in the Grade Pay of Rs. 4600 w.e.f. 01.01.2006 as per Fast Track Committee report of 6<sup>th</sup> Pay Commission Report 2008 and also as per the Clarification No. 1 and 2 of Office Memorandum No. 35034/1/97-Estt.(D) (Vol. IV) dated 10.02.2000 of ACP Scheme 1999."

4. This MA was objected to by the learned counsel of the respondent stating that this will change the nature of the main relief of the

OA and on the ground that this is not connected with the OA. However, no written reply was filed.

5. The applicants, later, on 30.12.18, filed a rejoinder in which they have, besides reiterating their earlier case, raised argument, mostly supporting grant of 1st ACP to applicants (other than applicant no 13 and 14), instead of 1<sup>st</sup> MACP. They have also annexed decisions of this Tribunal, on an ACP matter, in OA no. 514 of 2002, decided on 7.9.2009, its confirmation by the Hon H.C. and the Hon. Apex court. Other decisions annexed to the rejoinder are: decisions relating to grant of MACP to Pharmacists of the Defence Accounts, decision upholding such grant by CAT Bengaluru Bench, its confirmation by the Hon High Court of Karnataka, and the rejection of the Contempt petition on its compliance.

6. We have gone through the pleadings and heard the learned counsels of the parties. It is very clear that the main ground, on which the applicants had been seeking relief, the decision of the Principal Bench in OA No 3441/2012, slipped from under their feet, when that decision was overturned by the Hon. High Court of Delhi. They have tried to keep their case alive, by seeking to amend the prayer. This amounts to substituting the prayer for grant of MACP on the ground that was (then) found valid by the Principal Bench, with a prayer for grant of ACP, on grounds that they have now mentioned in their rejoinder. These grounds are also not common to all the applicants and therefore they had to make this new request excepting applicants number 13 and 14. We cannot allow the amendments

sought by this application (MA 391/ 2017), as it would amount to both misjoinder of issues and misjoinder of parties. This is also an attempt to seek a new relief, when the ground for the relief sought earlier has failed, *without even revealing the fact of such failure*, and amounts to not coming up with clean hands. MA/050/00391/17 is, accordingly, dismissed.

7.            Whatever sympathy we might have with the applicants, we also cannot grant the relief originally claimed in the OA as it has lost the very ground on which it was sought. We are not told anything about whether the decision of the Hon Delhi High Court was challenged, and if it was, what was the outcome. It is clear from the copies of the decisions cited by the applicants in their rejoinder and produced at the time of arguments, that there are different, and may be, conflicting judgments on this matter. The decision of the Principal Bench, however, as categorically stated by the Applicants in paragraph 4.17 of the OA, is closest to the facts of their case as it relates to the Pharmacists in the Ministry of Health, their Nodal Ministry. The other decisions relate to other ministries and departments e.g. Ministry of Information and Broadcasting (CAT Patna(OA 514/2002) confirmed by Hon'ble High Court of Patna in CWJC 6451/2010 and the Apex court **on an ACP issue**, Railways(CAT Bangalore and Hon'be Karnataka High Court decisions), Defence Accounts, UDCs in the High Courts (Delhi High Court in WP(C) 9357/2016). Since the Hon'ble High Court of New Delhi, has overturned this decision of the Principal Bench , while leaving the issue of recovery to be decided separately on individual consideration (as held in the

case of State of Punjab v. Rafiq Masih), we also have no option but to follow that ratio in this case.

8. OA, therefore, fails. The respondents, are, however, directed to execute any recovery action, only after issuing a show cause notice since there may be circumstances, in each case, which may warrant non-recovery. The interim relief by way of stay on recovery granted earlier in this case, will, therefore, remain till this process of issuing show cause notice is complete. There will be no order as to costs.

**[ Dinesh Sharma ]**  
**Administrative Member**  
**Srk.**

**[Jayesh V. Bhairavia]**  
**Judicial Member**