

Bench

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/01388-01394/2018

DATED THIS THE 11th DAY OF OCTOBER, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

1. Vineesh. K, S/o. Balachandran Nair
Aged about 38 years
Working as Pharmacist
At S.W.R. Hospital
Mysore-570 020.
Resident of No.98/A
LOCO Colony
Mysore-570 020.

2. Mamatha.H.C., D/o.Chikkabasavegowda
Aged about 35 years
Working as Pharmacist
At S.W.R.Hospital
Mysore-570 020
Resident of No.2779
4th Stage, 2nd Phase
Vijayanagar
Mysore-570 018.

3. Saritha.C.K., D/o.K.Subramanian
Aged about 32 years
Working as Pharmacist
At S.W.R.Hospital
Mysore-570 020.
Resident of No.1432
3rd Main, 3rd Cross
Vijayanagar 2nd
Mysore-570 017

4. Abdul Lateef, S/o.Aboobeckar
Aged about 30 years
Working as Pharmacist
At S.W.R. Health Unit
Harihar-577 601.
Resident of No.68
Railway Colony
Harihar, Davangere-577 601.

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5. Chitrakala, W/o.M.Krishnakumar
Aged about 33 years
Working as Pharmacist
At S.W.R. Hospital
Mysore-570 020.
Resident of No.189
5th Main Road
Mahadeshwara Extension
Mysore-570 017.

6. Tintu, D/o.Shamsudheen
Aged about 30 years
Working as Pharmacist
At S.W.R. Health Unit
Sakleshpura, Hassan-573134.
Resident of No.06/B
Railway Quarters
Sakleshpura
Hassan-573 134.

7. Sandhya Rani Bai, D/o. M.Kameshwararao Naik
Aged about 27 years
Working as Pharmacist
At S.W.R.Health Unit
Ashokapuram, Mysuru.
Resident of No.1/2
6th Cross, Visweswaranagar
Mysore-570 008.

....Applicants

(By Advocate Sri V.V.Balan)

Vs.

1. The Union of India
Ministry of Railways
Rep. by its General Manager
South Western Railway
Hubli-580 020.
2. The Secretary
Ministry of Railways
Railway Board
Rail Bhavan, New Delhi-110 001.

...Respondents

(By Advocate Sri J.Bhaskar Reddy)

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

The case of the applicants in a nutshell is that they were appointed to the post of Pharmacist on various dates from 2012 to 2015. On cadre restructuring recommendations by the Railways in RBE.102/2013 dtd.8.10.2013(Annexure-A5) declaring that the post of Pharmacist in Grade Pay Rs.2800 is no more available and direct entry Grade Pay Rs.4200 is to be granted w.e.f. 1.11.2013, the applicants submit that they became eligible for Direct Entry GP-4200 w.e.f. 1.11.2013 as confirmed vide Memorandum dtd.19.1.2015. Since the respondents have failed to consider the case of the applicants for grant of direct entry in GP.4200, an OA.93/2014 was filed before this Tribunal by the Indian Railway Pharmacists Association of which the applicants are members and the OA was allowed by order dtd.17.6.2015(Annexure-A1). An RA.1/2017 filed by the respondents was disposed of by this Tribunal on 6.6.2017(Annexure-A1) holding that pharmacists in Railways who enter at a Grade Pay of Rs.2800 will automatically gets a Grade Pay of Rs.4200 on completion of two years and this automatic pay is not a promotion. Their entitlement for MACP commences from the point of two years being completed. Since the respondents did not comply with the said order, the applicants filed CP.59/2016 which was disposed of based on the compliance report of the respondents vide memorandum dtd.19.1.2018(Annexure-A2) stating that the orders will be complied with. A Writ Petition No.110551/2017(S-CAT) filed by the respondents before the Hon'ble High Court of Karnataka was dismissed by the Hon'ble High Court on 20.11.2017(Annexure-A4) upholding the order passed by this Tribunal in OA.No.93/2014. Since the respondents did not comply with the order in

OA.No.93/2014, the Association filed MA.114/2018 for restoration of CP.59/2016. But the said MA was dismissed by this Tribunal with direction to file individual applications(Annexure-A3).

2. The applicants submit that as per RBE.177/2003(Annexure-A6), the pay structure recommended for Railway Pharmacists cadre keeping in view the existing hierarchy with distribution of posts unchanged on merger of pay scales i.e. for Pharmacist-III(20%) (original scale up to 31.12.2005 is Rs.4500-7000) replaced to PB-2+GP 4200, Pharmacist-II(25%) (original scale up to 31.12.2005 is Rs.5000-8000) replaced to PB-2+GP 4600, Pharmacist-I(35%) (original scale up to 31.12.2005 is Rs.5500-9000) replaced to PB-2+GP 4600, Chief Pharmacist-II(10%) (original scale up to 31.12.2005 is Rs.6500-10500) replaced to PB-2+GP 4800, Chief Pharmacist-I(10%) (original scale up to 31.12.2005 is Rs.7450-11000) replaced to PB-2+GP 4800 and for Pharmacy Officer (original scale up to 31.12.2005 is Rs.7500-11500) replaced to PB-2+GP 5400, is to be effective from 1.1.2006. Further on improved cadre restructuring as recommended by the expert committee vide RBE.102/2013 (Annexure-A5), the applicants became eligible for direct entry of GP-4200 w.e.f. 1.11.2013 as confirmed vide Memorandum of CPO/Hubli vide No.SWR/P.535/rest/Pharmacist dtd.19.1.2015 and vide letter dtd.11.2.2015 declaring that the post of Pharmacist in GP-2800 is no more available. Since the applicants No.1,3,4,5,6 &7 were appointed after 1.11.2013, they became eligible for direct entry of GP-4200 on their respective date of recruitment in GP-2800. The applicant No.2 whose date of recruitment in GP-2800 is 21.11.2012, has become eligible for direct entry of GP-4200 w.e.f. 1.11.2013 only. The applicants submit that the benefit of improved cadre restructuring as recommended by the expert committee has to

be implemented to the Railway Pharmacists without any discrimination based on the principles laid down as the posts in GP-2800 are declared as 00% on declaring that 'the post of Pharmacist in GP-2800 is no more available' and to grant direct entry scale in GP Rs.4200 w.e.f. 1.11.2013. But the respondents have failed to implement the said recommendations of the expert committee in respect of the Pharmacists which is illegal, arbitrary and amounts to discrimination and against natural justice. Therefore, the applicants submitted representations dtd.1.11.2017 & 2.2.2018(Annexure-A8) but the same was not considered. Aggrieved by the same, the applicants have filed the present OA seeking the following relief:

- i. *Direct respondents to grant direct Entry scale in GP-4200/- w.e.f. 01.11.2013 as GP-2800 is declared "as no more available" with 00%(NIL) vacancies as a benefit of improved Cadre Restructuring vide RBE.102/2013.*
- ii. *Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case, may also be passed in favour of the applicants.*
- iii. *Cost of the proceedings be awarded in favour of the applicants and against the respondents.*

3. The respondents, on the other hand, have submitted in their reply statement that the issue raised by the applicants related to granting of direct entry to GP Rs.4200/- by way of ante-dating is misplaced and is not maintainable. Granting of GP Rs.4200 is subject to the condition that a pharmacist has to complete the minimum period of 2 years of regular service after being initially appointed to the initial entry grade in PB-1 with GP Rs.2800. This has been mentioned and reiterated in all the Railway Board's letters issued from time to time. There are no instructions till date to the contrary as claimed by the applicants. The prayer of the applicants is related to policy matter which is decided at appropriate level. Quoting of RBE.No.177/2003 is out of context which

has got no relevance to the case in hand. The said RBE has only prescribed the revised percentages for upgraded posts which included the grades of the then pay scales of Rs.6500-10500 and Rs.7450-11500 wherein the existing percentages of 5% were enhanced to 10%. The placement of GP Rs.4200/- w.e.f. 1.1.2006 is in line with the guidelines issued by the Railway Board vide RBE No.47/2010, 165/2010 and Railway Board letter dtd.20.4.2011(Annexures-R1, R2 & R3 respectively) which says that the placement of the Pharmacists in GP Rs.4200/- in PB 2 on completion of 2 years regular service in GP Rs.2800 in PB-1(entry grade) has to be treated as one upgradation under the MACP scheme. This is indeed a matter of policy wherein the condition of 2 years has to be fulfilled for earning an upgradation and the same has not been challenged by the applicants. The respondents have taken action and have acted upon the Railway Board Circulars and they filed SLP(C) Diary No.28649/2018 before the Hon'ble Supreme Court in the said policy matter and the case is still pending.

4. The respondents submit that as per the recommendation by the Fast Track Committee, the entry grade of pharmacist in Central Govt. will remain at GP Rs.2800 in PB-1. However, on completion of two years of service in entry grade, all the incumbents should be granted upgradation to the next higher GP Rs.4200 in PB-2 which will be delinked from vacancies and will become non-functional and time-bound. By the recommendation of Fast Track Committee, the net promotional avenue available to the pharmacists in lower grades(Rs.4500-7000, 5000-8000 & 5500-9000) to erstwhile grades to chief pharmacists in pre-revised scale Rs.6500-10500 and 7450-11500(placed in PB-2 +GP 4600 and merged) continued to be unaffected and have further been improved through cadre restructuring undertaken vide Board's letter dtd.8.10.2013(Annexure-R5).

The said recommendations are accepted by the Central Government. But since the said recommendations are not fully complied in OM dtd.18.11.2009 nor in RBE 47/2010 issued by the Min. of Railways, in order to clarify the matter, one more OM was issued wherein the word 'promotion' in second sentence of para 3 of the OM dtd.18.11.2009(Annexure-R4) may be read as 'placement'. Therefore, the averments of the applicants are fully denied as false and the OA is liable to be dismissed with costs.

5. The applicants have filed rejoinder reiterating the submission already made in the OA and submit that the respondents being part and parcel of Union of India have deviated from implementing the clarified and consented orders of this Tribunal in OA.No.93/2014, CP.59/2016 & RA.1/2017 issued in terms of existing policies and guidelines which is now upheld by the Hon'ble Apex Court in Diary No.28649/2018 vide order dtd.10.5.2019(Annexure-A), which entitles their claim for direct entry pay in GP-4200 in terms of respondents memorandum dtd.19.1.2015. The respondents failed to take note of the pre-existing functional scales as on 1.1.2006 only in GP-2800 with 20% and the 1st functional promotional scale in GP-4600 with 60% on implementation of the 6th CPC Fast Track Committee in the revised hierarchy. If the contentions of the respondents are considered, all the pharmacists who were extended 1st promotion/MACP in GP-4600 w.e.f. 1.1.2006 as ordered by this Tribunal in OA.No.93/2014 and the same now being upheld by the Hon'ble Apex Court, which is settled matter, will be dishonoured as all these pharmacists will be reverted and placed in GP-4200. Hence, the submissions of respondents are baseless, contrary and violative of Hon'ble Courts and the policy of restructuring. The action of the respondents therefore is unjust and unfair.

6. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. This Tribunal in OA.No.93/2014 vide order dtd.17.6.2015 and in RA.No.1/2017 vide order dtd.6.6.2017, had clarified the issue as follows:

“This matter seems to require a little bit of clarification. Pharmacists in Railways enter at a Grade Pay of Rs.2,800/-. Automatically on completion of 2 years, as if, they are completing the probation they automatically gets a Grade pay of Rs.4,200/-. Therefore, since they will automatically get it, it is not a promotion. Their entitlement for MACP, therefore, commences from this point of 2 years being completed. The learned counsel for the Railways Shri N.Amaresh is also in agreement with the proposal as well as Shri V.V.Balan, who appeared for the original applicant. Therefore, with this clarification, RA is not required. RA is, therefore, disposed of. No order as to costs.”

Pursuant to that, the respondents had issued a Memorandum dtd.19.1.2018 vide Annexure-A2 which is a compliance report submitted in CP.No.59/2016 arising out of OA.No.93/2014. The said orders being taken on challenge before the Hon'ble High Court of Karnataka were dismissed in WP.No.110551/2017(S-CAT) vide order dtd.20.11.2017. The SLP(C) Diary No.28649/2018 filed against this WP has been dismissed vide Annexure-A order dtd.10.5.2019. The crux of the issue is that the upgradation from Grade Pay of Rs.2800 on entry to the further Grade pay of Rs.4200 is on a non-functional basis after two years of regular service in the Grade Pay of Rs.2800. The respondents themselves have confirmed this in their RBE.109/2010 vide dtd.5.8.2010 wherein the word 'promotion' itself has been changed as 'placement'. Therefore, the respondents have to consider any upgradation under MACP only after taking note of the fact that the said upgradations shall take effect from the date when the non-functional Grade Pay of Rs.4200 is granted. The respondents turning around now and saying that the placement of Pharmacists in Grade Pay of Rs.4200 on completion of two years of regular service in Grade Pay of Rs.2800 is treated as

one upgradation under MACP scheme vide the orders mentioned at Annexure-R1, R2 & R3 is clearly against the settled position as confirmed by the Hon'ble Apex Court vide Annexure-A. In terms of the percentages given for the various categories of Pharmacists and promotions to the various levels, it is obvious that such promotions will accrue to the Pharmacists only based on the seniority and suitability on a regular basis subject to the availability of the vacancies which the respondents have to decide based on the restructuring of the cadre already approved by them. In other words, the restructuring which has been approved by the respondents vide Annexure-A5 dtd.8.10.2013 will be with reference to the restructuring of the cadres as on 1.11.2013. Based on such vacancies, the applicants will have every right for promotion to the respective grades. However, with respect to MACP, the same shall take effect only with respect to the date from which the applicants have been given the non-functional Grade Pay of Rs.4200 and this non-functional upgradation from the Grade Pay of Rs.2800 cannot be considered as one upgradation for the purpose of MACP. Therefore, the respondents shall issue further proceedings relating to MACP taking note of the above with respect to the applicants within a period of three(3) months from the date of issue of this order.

7. The OA is allowed to the above extent. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred to by the applicants in OA.No.170/01388-01394/2018

Annexure-A1: Orders of Hon'ble Tribunal in OA.93/2014

Annexure-A2: Orders of Hon'ble Tribunal in CP.59/2016, compliance order in CP.59/16

Annexure-A3: Orders of Hon'ble Tribunal in MA.114/2018

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Annexure-A4: Orders of Writ Petition No.110551/2017(S-CAT) dismissed in High Court of Karnataka dtd.20.11.2017

Annexure-A5: RBE No.102/2013 dtd.8.10.2013 and Central Railway etc. orders 'Memorandum' issued by APO/M for CPO/Hubli vide No.SWR/P.535/rest/Pharmacist dtd.19.1.2015

Annexure-A6: Distribution of posts existing as on 1.1.2006 on FTC

Annexure-A7: Date of appointment as Railway Pharmacist as circulated by Railways dtd. 2017

Annexure-A8: Representations of applicants

Annexures with reply statement:

Annexure-R1: The Railway Board RBE No.47 of 2010

Annexure-R2: The Railway Board RBE No.165 of 2010

Annexure-R3: Railway Board letter No.PC-V/2009/ACP/2 dtd.20.4.2011

Annexure-R4: The Ministry Expenditure Office Memorandum dtd.18.11.2009

Annexure-R5: The Railway Boards letter No.PC-III/2013CRC/4 dtd.8.10.2013

Annexures with rejoinder:

Annexure-A: Hon'ble Supreme Court orders upholding the orders of the Hon'ble High Court of Karnataka to Hon'ble CAT Bangalore in OA.93/2014
