

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

ORIGINAL APPLICATION NO.170/01395-01402/2018

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. Vijaya Mohan, D/o. T.K.Balaraman
Aged about 56 years
Working as Chief Pharmacist
At S.W.Railway Hospital
Yadavgiri, Mysore-570 020.
Resident of No.322
10th Cross, Vijayanagar Railway Layout
Mysore-570 016.

2. Anil Kumar Rao, S/o.Late K.K.Gopal Rao
Aged about 57 years
Working as Chief Pharmacist
At S.W.Railway Hospital
Yadavgiri, Mysore-570 020
Resident of No.2779
4th Stage, 2nd Phase
Vijayanagar
Mysore-570 018.

3. A.Shihshankar, S/o Late R.Adaveeshaiya
Aged about 56 years
Working as Chief Pharmacist
At S.W.Railway Hospital
Yadavgiri, Mysore-570 020.
Resident of No.46
30th Cross, 4th Main, 2nd Stage
Vidyaranyapuram
Mysore-570 008.

4. Narendra Baliga, S/o. Late B.Mohandas Baliga
Aged about 56 years
Working as Chief Pharmacist
At S.W.R. Health Unit
Kabakaputtur-577 020.
Resident of No.250
Vanya, Padil, Puttur
Dakshin Kannada-574201.

5. Babu P Naresh, S/o.Narayanan Nambisan
 Aged about 52 years
 Working as Pharmacist
 At S.W.R. Hospital
 Mysore-570 020.
 Resident of No.38
 Railway Colony, KRS Road
 Mysore-570 020.

6. P.K.Rajeev, S/o.P.K.Vasu
 Aged about 52 years
 Working as Pharmacist
 At S.W.R. Hospital
 Mysore-570 020.
 Resident of No.
 Chamundeshwari Railway H.B.C.S layout
 Mysuru-570018.

7. Anthony Eric, S/o..Arun Kumar
 Aged about 45 years
 Working as Sr.Pharmacist
 At S.W.R.Health Unit
 Shimoga-577201.
 Resident of No.97
 Railway Colony
 Shimoga Town-577 201.

8. M.S.Surendrakumar, s/o. Late Suripandit
 Aged about 52 years
 Working as Sr.Pharmacist
 At S.W.R.Health Unit
 Mysore-570 020.
 Resident of No.216
 14th Cross, Railway Layout
 Mysore-570 016.

....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
 New Delhi-110 001.

...Respondents

(By Advocate Sri J.Bhaskar Reddy)

ORDER

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

The applicants in this case have earlier filed OA.No.93/2014 with a prayer for implementation of replaced promotional scales as recommended by the Fast Track Committee of 6th CPC. The said OA was allowed on 17.6.2015(Annexure-A1) by this Tribunal. 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 they qualified in written examination and on fulfilment of all conditions of seniority cum suitability, they should be extended the entitled 1st promotion in GP-4600 w.e.f. 1.1.2006 as per the Fast Track Committee recommendation, 2nd MACP in GP-4800 and 3rd MACP in 5400 without any discrimination based on the principles laid down by the 6th CPC. But the

respondents have failed to implement the said recommendations. The respondents asserted that they will comply with the orders in OA.93/2014, but practically they have not complied with till date. The claim of the applicants is clarified in RBE.101/2009 dtd.10.6.2007 by the respondents wherein it is stated that 'promotions earned/upgradations granted under the ACP scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradation of posts recommended by the 6th CPC shall be ignored for the purpose of granting upgradation under Modified ACPS'. But so far the applicants are not granted the same as clarified. They submit that the Railway Board letter dtd.9.10.2003(RBE.177/2003) confirms the claim of the applicants whereas the respondents have been following contrary to it by issuing a letter dtd.8.10.2013 RBE.102/2013(Annexure-A5). 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. Though the respondents have issued compliance orders vide memorandum dtd.19.1.2018(Annexure-A2), the applicants are not extended the entitled 1st promotion in GP-4600, 2nd MACP in

GP-4800 and 3rd MACP in GP-5400 as per the recommendations of the Fast Track Committee. This amounts to denial of right guaranteed to Pharmacists cadre and as such violative of principles of natural justice. It is a settled matter in Hon'ble High Court of Delhi in WP(C).No.9357/2016 dtd.20.12.2017 that MACPs are to be granted on completion of 10, 20 & 30 years of service from recruitment or 10 years from last promotion whichever is earlier. The applicants relied on the judgment of the Hon'ble Apex Court in SLP in CA.No.192/2014 wherein it is held that 'it is an accepted legal position that, right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution which virtually flows from guarantee of equality under Article 14 of the Constitution'. Being aggrieved by the inaction of the respondents in spite of their compliance letter at Annexure-A2, the applicants have filed the present OA seeking the following relief:

- i. *Direct respondents to grant replaced 1st promotion/ACP in GP-4600 to those Pharmacists who were granted 5000-8000 +5500-9000 and 2nd promotion in GP-4800 to those who were granted 6500-10500 under promotions/ACPS, respectively up to 31.8.2008, as 'Promotion is a Fundamental Right' and further 3rd MACPS granted in GP-5400.*
- ii. *Direct respondents to grant replaced 1st promotion in GP-4600 to those Pharmacists who were granted 1st promotion/ACPS in 5000-8000 up to 31.08.2008 and further entitled 2nd promotion/MACP in GP-4800 and further 3rd MACPS granted in GP-5400.*
- iii. *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.*
- iv. *Cost of the proceedings be awarded in favour of the applicants and against the respondents.*

2. The respondents, on the other hand, have submitted in their reply statement that the issue raised by 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 applicants were appointed as Pharmacists 'B' in CPC scale Rs.330-560 which is now equated to entry level grade of Rs.5200-20200(GP-2800) in 6th CPC and brought under level 5 of 7th CPC. They have got first financial upgradation/promotion as per their entitlement to scale of Rs.5000-8000 (which is replaced with PB-2 + GP-4200 in 6th CPC and brought to level 6 under 7th CPC scale) under old ACP scheme. The granting of 1st financial upgradation to GP Rs.4200 w.e.f. 1.1.2006 as per the recommendations of Fast Track Committee(RBE No.47/2010) will not arise in as much as they have already been granted the benefits w.e.f. 1.10.1999 under the old ACP scheme. The other issues regarding granting of promotion to GP Rs.4600 by way of ante-dating or otherwise (which has already been granted w.e.f.1.9.2008 by way of 2nd MACP) and granting of 3rd MACP to GP Rs.5400 instead of Rs.4800(already granted) is a matter of policy and records. There are no instructions regarding treating of the upgraded scale of Rs.9300-34800 with GP Rs.4200 as entry level grade for the purpose of granting MACP benefits to GP Rs.4600, Rs.4800 & Rs.5400 on completion of 10, 20 & 30 years of service. The benefit of 2nd financial upgradation to GP Rs.4600 on completion of 20 years of service falling on 20.6.2003 is extended w.e.f. 1.9.2008 i.e. from the date of operation of the new MACP scheme.

2. The respondents submit that the applicants are not correct when they say that they should be given the GP Rs.4600 on promotion which will accrue only as per their turn and as per their seniority cum suitability, on a regular basis subject to availability of vacancies. Therefore, they have been granted the benefits of

financial upgradation on non-functional basis under the MACP scheme in due obedience to the order of this Tribunal. The placement in GP Rs.4200 w.e.f. 1.1.2006 is in line with the guidelines issued by the Railway Board vide RBE 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. Therefore, the averments of the applicants are fully denied as false and the OA is liable to be dismissed with costs.

3. 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-1). The corresponding GP-4200 on implementation of the Fast Track Committee recommendations to the Pharmacists was declared as Non-Functional Grade and not a promotion as already settled by the Hon'ble Courts and also in terms of respondents' order vide RBE.109/2010 wherein the 1st promotional scale is in GP-4600 as GP-4200 is declared as not a promotion. The respondents have not extended the 1st

promotion/MACPs in GP 4600. Hence, the applicants are contending that they are entitled to the 1st promotion/MACP in GP-4600 w.e.f. 1.1.2006 as they have fulfilled the promotional norms of bench mark etc., for grant of the same in hierarchy of cadre. The respondents also submitted compliance report dtd.19.1.2018 in CP.59/2019(OA.93/2014) stating that the entitlement for 1st MACP in PB-2 with GP-4600 will be counted from the date of entry to PB-2 +GP-4200 provisionally for the applicants. Despite the same, the applicants did not get the said 1st promotion/MACP in GP-4600 which is highly unjust and unfair as per Article 14 & 16 of the constitution. The action of the respondents in not conceding the legitimate demand of the applicant is to be declared as illegal and arbitrary and the respondents are directed to grant all consequential benefits with interest at the rate as specified by this Tribunal in the interest of justice and equity.

4. 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.

5. 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.170/01395-01402/2018

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

Annexure-A2: Orders of Hon'ble Tribunal in CP.59/2016, compliance order submitted to this Hon'ble CAT vide "MEMORANDUM" dtd.19.1.2018

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

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

Annexure-A5: Railway Board's Itr.No.PC-III/2003/CRC/6 dtd.9.10.2003 (RBE No.177/2003) & Itr dtd.8.10.2013 RBE No.102/2013

Annexure-A6: Date of appointments and promotions/ACPS attained

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

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
