

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 24.08.2012

+ **W.P.(C) 5146/2012**

UNION OF INDIA

... Petitioner

versus

DELHI NURSES UNION (REGD.) & ANR

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr D.S. Mehandru

For the Respondent : Ms Tamali Wad

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against the order dated 09.05.2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.141/2012. The issue involved in this writ petition pertains to

the grant of the 3rd Financial Upgradation under the Modified Assured Career Progression Scheme (MACPS) issued by the Department of Personnel and Training (DoPT) by an office memorandum bearing No.35034/3/2008-Estt. (D) dated 19.05.2009. The employees involved in the present writ petition are Assistant Nursing Superintendents (ANS) and some of them are Deputy Nursing Superintendent (DNS) (non-functional). The question that arises for consideration is whether the ANS and DNS (non-functional) are to be given the grade pay of ₹6600/- in Pay Band-3 as their third financial upgradation on completion of 30 years under the said MACPS. According to the respondents, the only thing that has to be seen under the scheme is the next immediate higher grade pay and not the next hierarchical post. On the other hand, the learned counsel for the petitioner submitted that the promotional avenue available to ANS is that of DNS which falls within the same Pay Band-3 and has the same grade pay of ₹5400/- and, therefore, they cannot be given the grade pay of ₹6600/- which is in the next higher post of Nursing Superintendent.

2. The respondents had filed the Original Application seeking the following reliefs:-

- “(a) Summon the relevant records pertaining to grant of as well as revocation of the 3rd Financial Upgradation under MACPS to nursing personnel (ANS/DNS cadre) in various Central Government Hospitals in Delhi.
- (b) Quash and set aside the Office Memorandum No.A.11015/01/2011-N dated 09.12.2011 issued by the respondent No.1.
- (c) Quash and set aside order No.3-2/2011-Admn.(III)N/SS1/2011 issued by Safdarjung Hospital (respondent No.5) & order No.F.No.23-2/NS (Admn.)/11/6858 dated 30.12.2011 issued by the Dy. Director Admn., DGHS, Lady Harding College and Smt S.K. Hospital (respondent No.6).
- (d) Issue appropriate orders directing the respondents not to issue any further order(s) revoking the 3rd Financial Upgradation in grade pay ₹6600/- under the MACPS from the ANS/DNS cadre in PB-3 ₹15600-39100 in hospitals under the Central Government.
- (e) Issue appropriate directions to the respondents not to take any further action for recovery etc. in pursuance of Office Memorandum No.A.110015/01/2011-N dated 09.12.2011 issued by the respondent No.1.
- (f) Issue appropriate directions to the respondents to re-fix the pay of the applicants in PB-3 ₹15600-39100 plus grade pay ₹6600/- with all consequential benefits as per law.
- (g) Pass any other and further order which this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

3. Paragraph 2 of the MACPS is relevant for our purposes. It reads as under:-

“2. The MACPS envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section 1, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. Thus, the grade pay at the time of financial upgradation under the MACPS can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion. In such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/organization will be given only at the time of regular promotion.”

4. The learned counsel for the petitioner submitted that even paragraph 4 of the MACPS would be relevant. The said paragraph reads as under:-

“Benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial upgradation under the Scheme. Therefore, the pay shall be raised by 3% of the total pay in the pay band and the grade pay drawn before such upgradation. There shall, however, be no further fixation of pay at the time of regular promotion if it is in the same grade pay as granted under MACPS. However, at the time of actual promotion if it happens to be in a post carrying higher grade pay than what is available under MACPS, no pay fixation would be available and only difference of grade pay would be made available. To illustrate, in case a Government Servant joins as a direct recruit in the grade pay of ₹1900 in PB-1 and he gets no promotion till completion of 10 years of service, he will be granted financial upgradation under MACPS in the next

higher grade pay of ₹2000 and his pay will be fixed by granting him one increment plus the difference of grade pay (i.e. ₹100). After availing financial upgradation under MACPS, if the Government servant gets his regular promotion in the hierarchy of his cadre, which is to the grade of ₹2400, on regular promotion, he will only be granted the difference of grade pay between ₹2000 and ₹2400. No additional increment will be granted at this stage.”

5. However, we feel that the said paragraph 4 would apply only in cases of regular promotion. The case before us is not of regular promotion but of grant of third financial upgradation under the MACPS. Therefore, paragraph 4, in our view will be of no consequence.

6. The learned counsel for the respondents also drew our attention to paragraph 20 of the MACPS which reads as under:-

“20. Financial upgradation under the MACPS shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employees on the ground that the junior employee in the grade has got higher pay/grade pay under the MACPS.”

7. From the above extracts, particularly of paragraph 2 and 20 of the MACPS, it is evident that the MACPS envisages the placement in the immediate next higher grade pay in the hierarchy of the recommended

revised Pay Bands and grade pays as given in Section 1, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. It is also clear that the financial upgradation under the MACPS is purely personal to the employee and does not have any relevance to his seniority position. As such, there is also a possibility of a junior employee, who having got the benefit of financial upgradation, getting a higher pay/grade pay than a senior employee.

8. We may also point out that in paragraph 19 of the MACPS it has been categorically stated that the financial upgradation under the scheme amounts to mere placement on a personal basis in the immediate higher grade pay/grant of financial benefits only and does not amount to actual/functional promotion of the employee concerned. In other words, the question of promotion to the next hierarchical post is totally de-linked from the question of grant of financial upgradation.

9. From the above mentioned First Schedule (Part-A) in Section I of the CCS (Revised Pay) Rules, 2008 it is apparent that the respondents fall within serial No.17 which falls in Pay Band-3 corresponding to the pay scale of ₹15600-39100 which has the corresponding grade pay of ₹5400/-. The relevant portion of the table is given below:-

“THE FIRST SCHEDULE

(See Rules 3 & 4)

PART-A

Section I

Revised Pay Bands and Grade Pays for posts carrying present scales in Group ‘A’, ‘B’, ‘C’ & ‘D’ except posts for which different revised scales are notified separately

Present Pay			Revised Pay Structure		
S. No.	Post/Grade	Present Scale	Name of Pay Band/Scale	Corresponding Pay Bands/Scales	Corresponding Grade Pay
(1)	(2)	(3)	(4)	(5)	(6)
....
....
17	New Scale	8000-275-13500 (Group A Entry)	PB-3	15600-39100	5400
18	S-16	9000	PB-3	15600-39100	5400
19	S-17	9000-275-9550	PB-3	15600-39100	5400
20	S-18	10325-325-10975	PB-3	15600-39100	6600
21	S-19	10000-325-15200	PB-3	15600-39100	6600
....
....

10. It may also be pointed out that the next hierarchical post of Deputy Nursing Superintendent also falls within serial No.17 in Pay Band-3 having the same grade pay of ₹5400/-. However, the next higher post of Nursing Superintendent falls within serial No.21 which is in the same Pay Band but carries the corresponding grade pay of ₹6600/-.

11. The only point of controversy here is whether the respondents are to be given the grade pay of ₹5400/- or ₹6600/-. As pointed out above, the respondents' state that under the MACPS it is only the next higher grade pay that has to be reckoned and not the grade pay of the next hierarchical post. On the other hand, the learned counsel for the petitioner contends that it would be the grade pay of the next hierarchical post which would be allowable to the respondents and not the next higher grade pay.

12. The learned counsel for the petitioner further drew our attention to answers given to Frequently Asked Questions on the MACPS issue by the DoPT. He sought to draw our attention to question at serial No.6 which reads as under:-

**“FREQUENTLY ASKED QUESTIONS (FAQs) ON MODIFIED
ASSURED CAREER PROGRESSION SCHEME**

	Point of doubt	Clarification
.....
.....
6.	Whether the promotions in same grade would be counted for the purpose of MACPS?	The financial up-gradation under the MACPS is in the immediate next higher grade pay in the hierarchy of recommended revised pay bands and grade pay as given in CCS (Revised Pay) Rules, 2008. However if the promotional hierarchy as per recruitment rules is such that promotions are earned in the same grade pay, then the same shall be counted for the purpose of MACPS.
.....
.....”

13. However, this again deals with the question of promotion with which we are not concerned. We are only concerned with financial upgradation under the MACPS.

14. It may be worthwhile to note that question No.1 under the same FAQs reads as under:-

	Point of doubt	Clarification
1.	What is Modified Assured Career Progression Scheme (MACPS)?	The MACPS Scheme for Central Civilian Government Employees is in supersession of earlier ACP Scheme. Under the MACP Scheme three financial up-gradations are allowed on completion of 10,20,30 years of regular service, counted from the direct entry grade. The MACPS envisages merely placement in the immediate next higher grade pay as given in Section I, Part-A of the first schedule of the CCS (Revised Pay) Rules 2008, in case no promotion has been earned by the employee during this period.”
.....
.....

15. This apparently reiterates what has been stated in paragraph 2 of the MACPS and refers to the same table which we have already elaborated upon.

16. The learned counsel for the petitioner then referred to the OM dated

09.12.2011 issued by the Ministry of Health and Family Welfare (Nursing Section), as advised by Ministry of Finance, on the subject of grant of pay scale/grade pay to Assistant Nursing Superintendent under MACPS. The said office memorandum reads as under:-

“No.A.11015/701/2011-N
Govt. of India
MINISTRY OF HEALTH AND FAMILY WELFARE
(NURSING SECTION)

NIRMAN BHAWAN, NEW DELHI
DATED 9TH December, 2011

OFFICE MEMORANDUM

SUB: Grant of Pay Scale/Grade Pay to Assistant Nursing Superintendent under MACP-reg.

Reference have been received seeking clarification regarding the pay scale/grade pay to be granted to Assistant Nursing Superintendent on completion of 30 years of service as per instructions under MACP scheme, consequent upon acceptance of recommendations of Sixth Central Pay Commission by the Govt. both Assistant Nursing Superintendent and its promotional grade Deputy Nursing Superintendent have been granted PB-3 Pay Scale of ₹15600-39100 with grade pay of ₹5400.

2. The matter regarding fixation of pay on account of grant of MACP to Assistant Nursing Superintendent on completion of 30 years of service was taken up with

Department of Personnel & Training and on their advice with Ministry of Finance (Department of Expenditure). The issue has been examined by Ministry of Finance and they have advised as under:-

“Ministry of Health & FW is informed that in the instant case, MACP would have to be given only in PB-3 with GP ₹5400 as the normal channel of promotion is to this grade and MACP is only a fall back option.”

3. It is further pointed out that Ministry of Health and FW vide its letter No.Z-28015/02/2009-N dated 31st March 2009 had clarified that under the provisions of CCS (RP) Rules 2008, on promotion from one grade to another having the same grade pay, the Govt. servant will be granted one additional increment on account of promotion.

4. In the light of the aforesaid advice given by Ministry of Finance (Dept. of Expenditure) and the clarification issued by Ministry of Health & FW in para 3 above, MACP granted by Dr. RML Hospital, New Delhi etc. to Assistant Nursing Superintendent on completion of 30 years of service may be reviewed immediately further necessary action taken accordingly. In case any clarifications are required, the same may be brought to the notice of Ministry of Health & FW in a consolidated manner duly approved from the Medical Superintendent of the Hospital within a period of two months positively failing which it will be assumed that no further clarification are needed in the matter.

Sd/-
(S.N. Sharma)
Under Secretary to Govt. of India.”

17. On going through the said office memorandum it is apparent that the so-called clarification, on which the learned counsel for the petitioner is relying, has been issued by the Ministry of Finance and not by the DoPT which has issued the MACPS. In our view, the so-called clarification does not improve the position of the petitioner.

18. Most importantly, this very issue had come up for consideration before this Court in the case of **R.S. Sengor and Ors v. Union of India and Ors**, in **W.P.(C) 3420/2010** decided on 04.04.2011. In that case the petitioners were in Pay Band-1 and had a corresponding grade pay of ₹1900/-. The next hierarchical post was also in Pay Band-1 but had a grade pay of ₹2400/-. The petitioners herein claimed that since the next hierarchical post had a pay band of ₹2400/-, they should, on financial upgradation, under the MACPS, be granted the grade pay of ₹2400/-. However, what the respondents in that case had done was to grant the petitioner therein the grade pay of ₹2000/- which was the next higher grade pay though, not the grade pay corresponding to the next hierarchical post. The Division Bench dismissed the petition of the writ petitioner therein and held as under:-

“10. The question would be whether the hierarchy contemplated by the MACPS is in the immediately next higher Grade Pay or is it the Grade Pay of the next above Pay Band.

11. Whatever may be the dispute which may be raised with reference to the language of paragraph 2 of the MACPS the illustration as per para 4 of Annexure I to the OM, contents whereof have been extracted hereinabove, make it clear that it is the next higher Grade Pay which has to be given and not the Grade Pay in the next hierarchical post and thus we agree with the Respondents that Inspectors have to be given the Grade Pay after 10 years in sum of ₹4,800/- and not ₹5400/- which is the Grade Pay of the next Pay Band and relatable to the next hierarchical post. To put it pithily, the MACPS Scheme requires the hierarchy of the Grade Pays to be adhered to and not the Grade Pay in the hierarchy of posts.”

(underlining added)

19. The Division Bench had clearly indicated that the MACPS requires the hierarchy of the grade pays to be adhered to and not the grade pay in the hierarchy of posts. This is exactly what the Tribunal has followed in its impugned order. If this is to be given effect to, we see no reason why this Court should not hold that the respondents are entitled to the next higher grade pay i.e., ₹6600/-. The Tribunal has only directed that the respondents

be given the next higher grade pay of ₹6600/- based on the decision of this Court in ***R.S. Sengor*** (*supra*). We see no reason to take a different view. Consequently, the writ petition is dismissed. There shall be no order as to costs. The petitioners are given time of one month from today to implement the directions contained in the Tribunal's order, as affirmed by us.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

AUGUST 24, 2012

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