



**DIRECTORATE OF HEALTH SERVICES
GOVT. OF N.C.T. OF DELHI
F-17, KARKARDOOMA, DELHI-110032
Tel. No.011-22301028**

No. 3(1)/2011/DHS/Estt/HQ/

Dated:

To

The All CDMOs/Addl. Dir.(SHS/MHS),
DCA/DDO/Accounts officer, DHS (HQ),
Dte. of Health Services,
Delhi-110032.

**Sub: Regarding implementation for fixation of pay after judgement of Hon'ble
CAT vide OA No.2962 of 2012 dt.03.09.2014 in r/o Smt. Anita Tomer & Ors.
Vs Govt. of NCT of Delhi & Ors.**

Madam/Sir,

In compliance of the judgement of Hon'ble Central Administrative Tribunal (C.A.T.), Delhi in OA No.2962 of 2012 dt. 03.9.2014 in the matter of the Anita Tomer & ors. Vs GNCT of Delhi & ors. (copy enclosed) vide which the respondents have been directed to re-fix the ACP up-gradations of the applicants in the Central Government Nursing hierarchy followed hitherto, by giving first financial up-gradation in the GP Rs.5400/- in PB-3, and without linking it to the scales that may be granted to PHN's who become eligible for financial up-gradations on or after 01.09.2008 under MACPs.

The first ACP to eligible applicants/plaintiff in the Grade Pay of Rs.5400/- in PB-3 may be fixed.

Encls: As above.

(DR. S.K. SHARMA)
DIRECTOR, DHS

No. 3(1)/2011/DHS/Estt/HQ/ ~~13~~ 88191-209. Copy to:

Dated: 13/4/15

1. PS to Addl. DHS (Medical)/HOO.
2. AO (Admn.), DHS (HQ).
3. Concerned PAO through officer concerned.
4. Concerned Dealing Assistant.
5. Website of DHS/SHIB Branch.
6. Guard file.

(DR. S.K. SHARMA)
DIRECTOR, DHS

Tamali Wad
Advocate

e-mail : tamali.wad@gmail.com
Cell No. 9810025306

132, Lawyers' Chambers, Supreme Court of India, Tilak Marg, New Delhi - 110 001
Tel. No. 91 11 2338 7232, Fax No. 91 11 23389835

479, Lawyers' Chamber, Block - II, Delhi High Court, Sher Shah Road, New Delhi-110003

To,

Directorate of Health services,

Through Its Director,

Government of NCT of Delhi,

F-17, Karkardooma,

Delhi.

Dated: .09.2014

**SUBJECT : RAGARDING IMPLEMENTATION OF JUDGEMENT OF CENTRAL ADMINISTRATIVE
TRIBUNAL DATED 03/09/2014 IN OA NO. 2962 OF 2012 SMT. ANITA TOMAR AND ORS. VS GOVT.
OF NCT OF DELHI AND ORS.**

Sir/ Madam,

Please find enclosed herein a certified copy of the captioned judgment of the Central
Administrative Tribunal on 03.09.2014.

I request on behalf of my client for an early implementation of the aforementioned order not
later than the time period of three months as directed by the Hon'ble Tribunal.

Thanking You

Yours sincerely

Tamali Wad
(TAMALI WAD)

Enclosure: As Stated

Sh. Taranshet Singh

26/9/14.

Mr. 25/9
I/C Court case Cell

By Regd. Ad Post By Hand 2

4079/J

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

61/35

Copernicus Marg, New Delhi

Date : 19/08/2014

From
The Principal Registrar
Central Administrative Tribunal
Principal Bench, New Delhi

- To
1. Ms. Tarnali Wad, counsel for applicant, 132, Lawyers Chambers
Supreme Court, New Delhi-01.
 2. Shri K.M. Singh, counsel for respondents, CAT Bar Room, New Delhi.

Regn: OA No.2982/212

MA No. 1866/2013

MA No. 2818/2013

Smt. Anita Tomar & Ors.

Applicant(s)

Versus

Govt. of NCT of Delhi & Ors.

Respondent(s)

Sr.

I am directed to forward herewith a copy of Judgment/Order dated:
03/08/2014 passed by this Tribunal in the above mentioned case for information
and necessary action if any.

Please acknowledge the receipt



Yours faithfully,

A handwritten signature in black ink, likely belonging to the Section Officer.

Section Officer-J-II
For Principal Registrar

Encl:

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA No. 2962/2012
MA No. 1866/2013
MA No. 2818/2013

Order Reserved on: 29.05.2014
Pronounced on: 03.09.2014

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)

1. Anita Tomar,
W/o Shri S.S. Panwar
Resident of 2/801 Shakti Kunj Apptt.
Plot No.B-9/3, Sector-62, Noida.
2. Shashi Saini,
W/o Jag Mohan Saini
Resident of H. No.147/1
Street No.6, Than Singh Nagar Anand Parbat
New Delhi-110005.
3. Mrs. Sapna Kiran Dampatkar
W/o Dr. Kiran Dampatkar
Resident of Flat No.C-17 Bhaarma Apptt
Sector-7 Plot No.7 Dwarka-110075.
4. Miss Neelam Siddiqui,
W/o Nadeem Siddiqui
Resident of 76-Indra Vihar
Kingsway Camp Delhi.
5. Mrs. Manju Sapra
W/o Shri R.K. Sapra
Resident of F-97, Sarita Vihar,
New Delhi.
6. Mrs. Shila Patiyal
W/o Shri D.S. Patiyal
Resident of Flat No.151,
Sector 12 Pocket-2
Dwarka.



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MAMC

7. Ms. Charanjeet Kaur,
W/o Shri Sardar Maninder Pal Singh
Resident of A-50 Mohindra Enclave,
Gujrawala Town.
8. Mrs. Geeta Bohra,
W/o Raj Kumar Bohra
Resident of 125-H/Pkt IV
Mayur Vihar Phase-1
New Delhi.
9. Ms. Rita,
D/o Shri Santokh Singh
Resident of 3/33 1st Floor
Subash Nagar,
New Delhi.
10. Ms. Sujata Gandha,
W/o Dr. Surender Kumar
Resident of 80-A,
DDA LIG Flats Rajouri Garden,
New Delhi-27.
11. Mrs. Romila Lamba,
W/o Shri Rakesh Lamba
Resident of B-219,
SFS Sukhdev Vihar
New Delhi.
12. Mrs. Jasbeer Kaur,
W/o Sardar Kashmir Singh
Resident of III-A/14 A
Vishnu Garden New Delhi-18.
13. Mrs. Bhupinder Kaur,
W/o Shri D.S. Choudhary
Resident of G-16/7,
1st Floor Malviya Nagar,
New Delhi.
14. Mrs. Alka Malhotra,
W/o Shri Sudhir Malhotra
Resident of 21, Gautam Apartments,
Gautam Nagar, New Delhi-49.
15. Mrs. Anuradha Narang,
W/o Shri Salil Narang
Resident of WZ/27,



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Mukharam Park Ext.
Tilak Nagar, New Delhi.

16. Mrs. Sneh Khurana
W/o Shri Vijay Khurana
Resident of 550/12 Majlis Park
Adarsh Nagar D-33
New Delhi.
17. Mrs. Rajni Gulani,
W/o Shri Mohinder Kumar
Resident of AD 45-B
Shalimar Bagh Delhi-88.
18. Mrs. Sunita Garg,
W/o Shri Anup Garg,
Resident of MP-38,
Pitam Pura Delhi-34.
19. Mrs. Sunita Malik,
W/o Shri Ashwani Malik
Resident of B-156,
F-2 Shalimar Garden Ext.II
Shahibad Distt. Gaziabad.
20. Mrs. Renu Jhamb,
W/o Shri B.M. Jhamb
Resident of 1732/Aoutram Lane
GTB Nagar.
21. Mrs. Anupa Bhatia,
W/o Shri P.K. Bhatia
Resident of 118, Samrat Apartment
Vasundhra Enclave-96.
22. Mrs. Vinod Kathuria,
W/o Shri Rakesh Kathuria
Resident of C-4, T-3 Ram Prastha
Gaziabad.
23. Mrs. Ranjana Sharma,
W/o Shri A.C. Sharma
Resident of C-7, Aruna Park
Laxmi Nagar, Delhi.
24. Mrs. Kamlesh Arya,
W/o Shri Sudhir Arya



Resident of E-63, Preet Vihar,
New Delhi-92.

25. Mrs. Vijay Laxmi,
W/o Shri Umesh Sharma
Resident of A-2/225 Janak Puri
New Delhi.
26. Mrs. Baisakhi Chakraborty,
W/o Shri Shamir Chakraborty
Resident of 301, Gaur Ganga-2
Vaishali Sector-4, Gaziabad.
27. Mrs. Renu Wadhwa,
D/o Shri I.D. Wadhwa
Resident of H. No.4/13
Nehru Enclave East Kalkaji
New Delhi.
28. Mrs. Krishna Chaubey,
W/o Shri Late Dr. G.K. Chaubey
Resident of K-247, Sarita Vihar,
New Delhi.
29. Mrs. Poonam Rhode,
W/o Shri Raman Rhode,
Resident of B-18, A Kalkaji
New Delhi.
30. Mrs. Dhiraj Punjani,
W/o Shri Subhash Punjani
Resident of C-6-B/47
Janak Puri New Delhi-58.
31. Mrs. Sunita Negi,
W/o Shri Kailash Negi
Resident of C-1/71
Mangal Apptt Vasundhra Enclave.
32. Mrs. Parveen Bedi,
W/o Shri Dinesh Bedi
Resident of G1-164 A,
Shakti Khand II, Indira Puram
Gaziabad.
33. Mrs. Sunita Rana,
W/o Shri Sanjeev Rana
Resident of 128,



Bhagya Laxmi Apartment,
Sector-9 Rohini.

34. Mrs. Deepa Nair,
W/o Shri Siva Kumaran
Resident of B-52, IV Bharat Apptt.
Ramprashta Colony,
Gaziabad.
35. Mrs. Lalita Rani,
W/o Shri Apinder Singh
Resident of 19, Hargovind Enclave
Delhi-92.
36. Mrs. Shashi Kaushik,
W/o Dr. Suresh Kaushik
Resident of H. No.11 Ext. 2 B,
Nangloi, New Delhi-41.
37. Mrs. Adarsh Narang,
W/o Shri Pawan Narang
Resident of G-112 Pushkar Enclave
Paschim Vihar New Delhi-63.
38. Mrs. Viney Kapoor,
W/o Mr. Krishan Gopal Singh
Resident of B8/10, Sector-13
Rohini.
39. Mrs. Preeti Rawat,
W/o Shri N.S. Rawat
Resident of Flat No.50,
Popular Apartment Sector-13
Rohini.
40. Mrs. Gurdeep Kaur,
W/o Shri Ranjit Singh Ahluwalia
Resident of Block C-2 Flat G-2
Dilshad Garden Delhi.
41. Mrs. Veena Gupta,
W/o Mr. B.K. Gupta
Resident of C-2/51/Ashok Vihar
Phase-2 1st Floor, New Delhi.
42. Mrs. Ratna Bhattacharya,
W/o Shri U. Bhattacharya
Resident of C-2176,



Mangal Apartment
Vasundhara Enclave-98.

43. Mrs. Reeta Bajaj,
W/o Shri J.K. Bajaj
Resident of 1759 Qutrum Lana,
Kingsway Camp Delhi.
44. Mrs. Kamla Sharma
W/o Shri Manmohan Sharma
Resident of House No.381
Pocket 9 Sector-21,
Rohini, Delhi-86.
45. Mrs. Meena Franklin,
W/o Shri I. Franklin
Resident of F-181/4
Kaveri Apptt. Dilshad Colony
Delhi-95.

- Applicants

(By Advocate: Ms. Tamali Wad)

Vs.

Government of NCT of Delhi

1. Department of Health & Family Welfare,
Through its Principal Secretary,
Govt. of NCT of Delhi,
Delhi Sachivalaya, I.P.Estate,
9th level, New Delhi-110002.
2. Directorate of Health Services,
Through its Director
Government of NCT of Delhi
F-17, Karkardooma
Delhi.
3. Directorate of Family Welfare
Through its Director,
C-Wing, 7th Floor Vikas Bhawan-2,
Civil Lines, New Delhi-54.
4. The Dean
Maulana Medical College
Delhi Gate, New Delhi.
5. The Chief Secretary



Government of NCT of Delhi
Delhi Secretariat, New Delhi.

- Respondents

(By Advocate: Sh. K.M.Singh)

ORDER

Hon'ble Shri V.N.Gaur, Member (A)

MA-2467/2012 was filed for joining together and vide order dated 07.09.2012, the same was allowed.

2. The applicants, 45 in number, are Public Health Nurses (PHNs) under the Department of Health & Family Welfare, Government of NCT of Delhi, respondent no.1.

The present OA has been filed with the following prayer:

- “(a) To summon the records pertaining to revision of the pay of the applicants in light of the 5th CPC and 6th CPC report as well as financial upgradations granted to them till date.
- (b) To quash and set aside office order No.F.10/7/2006.MACP/PHN/DHS/ESH/HQ/42289-05 dated 3rd August 2012 issued by the Respondent No.2.
- (c) To issue appropriate directions to the respondents to give effect to the office order F.No. F(3)(1)/2011/DHS/Estt/HQ 29195-207 dated 14.06.2011 in respect of all the applicants and refix their pay in terms thereof with all consequential benefits as per law.
- (d) To modify order F.10/7/2006/MACP/PHN/ESH/HQ/38427-33 dated 4th August 2011 issued by the Respondent No.2 by giving effect to the office order F.No. F(3)(1)/2011/DHS/Estt/HQ 29195-207 dated 14.06.2011.



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(e) Issue appropriate directions to the Respondents not to take any further action for recovery etc. in pursuance of Office No F.10/7/2006.MACP/PHN/DHS/ESH/HQ/422 89-05 dated 3rd August 2012 issued by the Respondent No.2.

(f) 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. In brief, the case of the applicants is that the pay scales for the Nursing personnel followed in Govt. of NCT of Delhi are the same as followed by Government of India for the Nursing personnel working under the Central Government. The Central Government had upgraded the pay scale of the PHNs to Rs.5500-9000 after the implementation of the 5th Pay Commission and the next hierarchical post was in the scale of Rs.6500-10500. Respondent no.1 also wanted to implement the upgraded scale for the PHNs working under them. However, the Finance Department of respondent no.1 advised that revision of scales was not within the powers of respondent no.1 and the same would require approval of the Central Government. The respondent no.1 took up the matter with the Central Government and the latter, after consulting the Ministry of Finance, accorded approval to the upgradation of the PHN of respondent no.1 to the scale of Rs.5500-9000 with effect from

V



15.04.2005 vide letter dated 15.04.2005. This decision of Government of India was implemented by GNCTD vide order dated 05.11.2007 with effect from 15.04.2005. With regard to the ACP, the respondent no.1 vide letter dated 17.04.2008 (Annexure 7 to the OA) clarified that the PHN will get the first ACP in the scale of Rs.6500-10500 and second ACP will be in the scale of Rs.7450-11500. Following the introduction of the new pay scales recommended by 6th CPC the PHNs were granted the scale of Rs.9300-34800 with Grade Pay (GP) of Rs.4800 in PB-2 with effect from 01.01.2006. With regard to the revised pay scales of Nursing cadre in Government of India on the basis of the 6th CPC, the respondent no. 2 issued a clarification by letter dated 14.06.2011 (impugned) which is reproduced below:

"Directorate of Health Services
Govt of NCT of Delhi
F-17, Karkardoma Delhi

No. F.3(1)/2011/DHS/Estt/HQ/29195-207 Dated. 14.6.2011

Sub: Clarification regarding revised pay scales of Nursing
Government of India on the basis of Sixth Pay Commission.

Sir/Madam,

In continuation of the Office letter No.F.3(01)/2011/DHS/Estt./HQ/5127-5136 Dated 04/02/11 on the above cited subject. Now it is again clarified that ACP/MACP Scheme to the PHNs are to be granted in the following Grades pay w.e.f. 1.1.2006.

| S. No. | Entry Grade | MACP 1 st (10 years) | MACP 2 nd (20 years) | MACP 3 rd (30 years) |
|--------|----------------------------|--|--|---------------------------------|
| 1. | Pre revised Rs.5500-9000/- | Rs.6500-10,500/- (1 st ACP) | Rs.7450-11,500/- (2 nd ACP) | --- |
| 2. | w.e.f. PB-2 | PB-3 (Grade) | PB-3 | PB-3 |



| | | | | |
|---|---|---|--|---|
| 1.1.2006 (6 th Pay Commission) | Grade Pay Rs.4800/- (Pay Scale Rs.9300-34800) | Pay Rs.5400/- (pay scale Rs.15600-39100) (subject to minimum pay i.e. Rs.15600 of grade pay 5400 as per the fitment table). | Grade Pay Rs.6600/- (Pay Scale Rs.15600-39100) | Grade Pay Rs.7600/- (Pay Scale Rs.15600-39100). |
|---|---|---|--|---|

This issue with the approval of competent authority.

Yours faithfully,

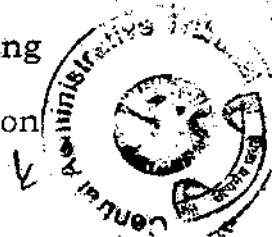
Sd/-
(D.S.Pundir)
Admin. Officer (DHS/HQ)

4. According to the respondents, the Government Auditors in their audit memo no. 59 dated 21.05.2010 objected to the grant of MACP to the scales as mentioned in the letter dated 14.06.2011 and clarified that the first MACP will be admissible in GP Rs.5400 in PB-2 and not to GP Rs.5400 in PB-3 as these are to be treated as separate GPs for the purpose of grant of upgradations under MACP Scheme. The clarification dated 14.06.2011 had skipped the GP of Rs.5400 in PB-2. Accordingly, the respondent no.2 issued office order dated 03.08.2012 (impugned) cancelling the clarification issued on 14.06.2011.

5. Ms. Tamali Wad, learned counsel appearing for the applicants stated that the impugned order which had the



effect of lowering the grade pay of the applicants, who were enjoying higher grade pay released under ACP scheme, was issued by the respondents without any notice to the applicants. It was further pointed out that according to First Schedule, Part-A of the notification following the 6th CPC, the scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 were merged and given the grade pay of Rs.4200. The Government of India vide its decision dated 13.11.2009 (Annexure A-22) granted the grade pay of Rs.4600 as replacement of the scale of Rs.6500-10500 and Rs.7450-11500. It is obvious that this set of replacement scales will not apply to the PHNs since their entry level scale itself had been upgraded to Rs.4800 and the fact that the CPC had made specific recommendation for the nursing cadre in Part-B of the First Schedule. It recommended Rs.4800 in PB-2 as the entry grade pay for Nursing cadre and those in the scale of Rs.6500-10500 were granted the GP of Rs.5400 in PB-3. Therefore, following the same logic, applicants who had already got the first ACP in the scale of Rs.6500-10500 during the period 01.01.2006 to 31.08.2008 and prior to 01.01.2006, were entitled to the GP of Rs.5400 in PB-3 as applicable to the Central Government Nursing cadre. There was nothing wrong in the clarification



issued by the respondent no.2 in OM dated 14.06.2011. By following the advice of the Audit that the first ACP should be granted in the pay scale of GP Rs.5400 in PB-2, the respondent no.2 ignored the fact that applicants had already been granted financial upgradations as per the provision of ACP Scheme in pay scales of Rs.6500-10500 and Rs.7450-11500 whose replacements in terms of hierarchy of posts would be respectively GP of Rs.5400 in PB-3 and GP Rs.6600 in the 6th CPC scales. The learned counsel stated that ACP upgradation to PHN, being an isolated post, was always given to the scale of the next hierarchical post on the pattern of the Central Government. The respondent no.1 had also clarified vide letter dated 17.04.2008 (Annexure-A-7 to the OA) that the PHNs would be given first ACP in the scale of Rs.6500-10500 and second ACP in the scale of Rs.7450-11500. The learned counsel pointed out that organizations like MCD had granted the first ACP in the scale of Rs.5400 (PB-3) as clarified vide letter dated 09.04.2012 (Annexure 20). Further the clarification dated 14.06.2011 was withdrawn without the approval of the competent authority, as admitted by the respondents in the counter that the matter was still under consideration of the respondent no.1.



6. The respondents in their counter reply filed on 10.01.2013 stated that the nursing staff was covered by Part-B of the First Schedule of the CCS (Revised Pay) Rules according to which the PHNs were given the entry level scale at Rs.4800 (GP) in PB-2. It was also true that in the pre-revised scales, their first ACP scale was Rs.6500-10500. However, while upgrading the entry pay scale of PHNs, there was no decision to upgrade the scale of Rs.6500-10500 to the GP of Rs.5400.

7. Shri K.M.Singh, learned counsel appearing on behalf of the respondents stated that the matter regarding the revocation of order dated 14.06.2011 has been taken up by respondent no.2 with the Government of NCT of Delhi vide office order dated 03.08.2012 and the decision of the competent authority was still awaited. In the meantime the Audit party had objected to the GP of Rs.5400 in PB-3 being given as the first MACP/ ACP since there was an intermediate scale of Rs.5400 in PB-2 available. The respondent no.2 had to, therefore, cancel the clarification issued vide letter dated 14.06.2011.

8. We have carefully gone through the submissions of the learned counsels and perused the material placed on record. The limited question to be considered is - what is



the first ACP scale to be given after 5th CPC revision of pay, to the applicants who were eligible or granted ACP scales prior to 01.01.2006 or during the period 01.01.2006 to 31.08.2008, before the introduction of MACP scheme?

9. The respondent no. 2 had issued clarification on 14.06.2011 which has been reproduced in this order earlier. It can be seen that this letter has columns of I MACP, II MACP and III MACP but no column for ACP scales. Only pre-revised scales have been shown with the words I ACP and II ACP shown in brackets. By implication the scales shown below in those columns are supposed to be corresponding scales of the I ACP and II ACP. The letter states that the following scales are to be followed for ACP/MACP schemes after 1.1.2006. Thus while focussing on the MACP scheme, the letter ends up in prescribing common scales/ grade pay of Rs.5400, Rs.6600 and Rs.7600 in PB-3 for upgradations both under ACP and MACP after 1.1.2006.

10. The MACP Scheme provides for three financial upgradations counted from the direct entry grade after completion of 10, 20 and 30 years of service respectively. Financial upgradation under the Scheme is admissible whenever a person has spent 10 years continuously in

the same Grade Pay. The MACP Scheme envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay band and grade pay as given in Section 1 Part-A of the First Schedule of CCS (Revised Pay) Rules, 2008. Viewed in the background of MACP Scheme the observation of the audit party cannot be faulted with. The Audit Memo does not specifically address ACP scales granted prior to MACPS. The difficulty has arisen because of the application of MACP principles to the applicants who had already earned their ACP upgradations prior to the introduction of MACP Scheme. The audit memo no.59 dated 21.05.2010 annexed to the counter affidavit filed by the respondents shows the manner in which the first, second and third MACP are to be granted to the PHNs, as reproduced in the following table:

| | From | To |
|------------|-----------------------|-----------------------|
| Ist MACP | 9300-34800+4800 (GP) | 9300-34800+5400 (GP) |
| IInd MACP | 9300-34800+5400 (GP) | 15600-39100+5400 (GP) |
| IIInd MACP | 15600-39100+5400 (GP) | 15600-39100+6600 (GP) |

11. We have extracted below the first individual case listed in the audit memo as an example:

Mrs. Meena Franklin

| | | |
|------------|----------|----------|
| D.O.B./DOA | 06.10.62 | 12.09.85 |
|------------|----------|----------|



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| | | |
|--------------------------------|------------|------------------|
| 6 th pay commission | 01.01.2006 | 9300-34800+4800 |
| I st MACP | 01.09.2008 | 9300-34800+5400 |
| II nd MACP | 01.09.2008 | 15600-39100+5400 |
| III rd MACP | NA | |

12. Mrs. Franklin who is applicant no.45 in the memo of parties, joined the service on 12.09.1985. According to the ACP scheme where the first financial upgradation was admissible after 12 years of service, she would be entitled to the first ACP on 12.09.1997 and the second ACP upgradation of 12.09.2009. However, as the date of second financial upgradation falls after the introduction of MACP scheme, she will be governed by the MACP scheme for the second financial upgradation. Having been granted the entry scale of Rs.5500-9000, the first ACP upgradation of the applicant would be to the scale of Rs.6500-10500, which is an admitted fact. This scale can be transposed into the 6th CPC regime in two ways. First is the one which was adopted by the respondents i.e. since under Part-A, Schedule I of CCS (Revised Pay) Rules the scale of Rs.6500-10500 will be equivalent to GP Rs.4600, which does not fit in for PHNs (with entry grade of GP Rs.4800), grant next higher scale possible of GP Rs.5400 in PB-2. The second is by applying the ACP scheme, grant the next higher scale in the hierarchy to the applicants. Since PHN is stated to be an isolated



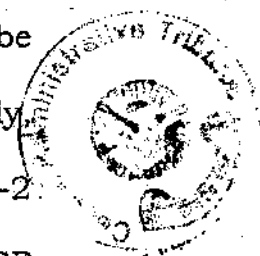
post, again there are two options either to apply the next higher scale of GP Rs.5400 in PB-2 or the next higher scale as given in the Part-B of Schedule I applicable to the Central Government Nursing cadre i.e. GP Rs.5400 in PB-3.

13. We note that prior to 6th CPC the PHNs were granted the scale of Rs.6500-10500 which was the scale of Asstt. Nursing Supdt. as shown in Part-B, Schedule I of CCS (Revised Pay) Rules extracted below:

| | | | | | | |
|----|---|-------------|-------------|------|------|--------|
| 1. | Staff Nurse | 5000-8000 | 7450-11500 | PB-2 | 4600 | 3.8.15 |
| 2. | Nursing Sister | 5500-9000 | 7500-12000 | PB-2 | 4800 | |
| 3. | Dietician Gr.II/ Lecturer in PT/OT/ Radiographer | 6500-10500 | 7450-11500 | PB-2 | 4600 | |
| 4. | Asstt. Nursing Superintendent | 6500-10500 | 8000-13500 | PB-3 | 5400 | |
| 5. | Deputy Nursing Superintendent | 7500-12000 | 8000-13500 | PB-3 | 5400 | |
| 6. | Nursing Superintendent | 8000-13500 | 10000-15200 | PB-3 | 6600 | |
| 7. | Chief Nursing Officer | 10000-15200 | 12000-16500 | PB-3 | 7600 | |

(emphasis supplied)

14. It is logical to conclude that for the isolated post of PHN under respondent no. 1 the same principle will be followed in the post 6th CPC scenario as well. Conversely if it is proposed to grant the scale of GP Rs. 5400 in PB-2 as the first upgradation, it has to conform to the ACP



scheme conditions. But the fact is that there is no post higher than PHN in the Nursing hierarchy either under the respondent no. 1 or the Central Government that could be associated with that scale. This scale does not meet the conditions of the ACP scheme. Therefore, the options mentioned above except the GP of Rs. 5400 in PB-3 cannot be applied in the case of the PHNs.

15. Considering this background we do not find any rationale behind introducing the scale of GP Rs.5400 in PB-2 for the purpose of ACP to PHNs prior to the introduction of MACP Scheme. Since the PHNs of respondent no.1 were granted the ACP to a scale which was also the next scale in the nursing hierarchy of Central Government, there is no justification for denying the same to the applicants who have already been given financial upgradations under ACP prior to introduction of MACP Scheme. The Audit has therefore erred in fixing the first financial upgradation of ACP under 6th CPC scales/ grade pay.

16. We also note while the clarification dated 14.06.2011 was issued with the approval of the competent authority, its cancellation order 03.08.2012



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does not say that it also had the approval of the competent authority. The respondents have admitted that the matter is still under consideration and the decision from the competent authority is awaited. We however are of the view that the letter dated 14.06.2011 was a clarification primarily on MACP scales and by implication it laid down scales for ACP. Since the Audit has objected only to first MACP upgradation to GP Rs.5400 in PB-3, we do not find any reason to interfere in the impugned order dated 03.08.2012⁽¹⁾ cancelling the order dated 14.06.2011 which was a general clarification envisaging, *inter alia*, first financial upgradation to GP Rs.5400 in PB-3 under MACP. However, the Audit has overlooked the difference between ACP and MACP upgradations while fixing the pay of the applicants.

5400-PB3 I
6600-PB2 II
7600-

17. Keeping in view the facts and circumstances of the case and discussion in preceding paras, we quash and set aside the order dated 04.08.2011⁽²⁾ (impugned) and direct the respondents to refix the ACP upgradations of the applicants in the Central Government Nursing hierarchy followed hitherto, by giving first financial upgradation in the GP Rs.5400 in PB-3, and without linking it to the scales that may be granted to PHNs who become eligible for financial upgradations on or after



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अधीक्षक अभियंता (न्याय)
Session Officer (J)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
मुख्यालय, नई दिल्ली
New Delhi Branch, New Delhi

