

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 1870/2009
MA 1270/2010

New Delhi this the 24th day of September, 2010

**Hon'ble Mr. Justice V.K.Bali, Chairman
Hon'ble Mr. L.K. Joshi, Vice Chairman (A)**

Dr. Pravesh Mehra,
S/o Shri P.N. Malvai,
BE-75, S.F.S. Janakpuri,
New Delhi-11 0058 ... Applicant

(By Advocate Shri Ashok Kashyap)

VERSUS

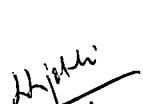
1. Union of India
through
Secretary, Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi.
2. Director General Health Services,
Nirman Bhawan, New Delhi.
3. Director,
Lady Hardinge Medical College,
Connaught Place, New Delhi-1 ... Respondents

(By Advocate Shri V.S.R.Krishna)

ORDER

Mr. L.K.Joshi, Vice Chairman (A) :

The issue which we are called upon to consider in this OA is as to from which date the Dynamic Assured Career Progression Scheme (DACP), as proposed by the Fifth Central Pay Commission (V CPC), would apply to the Dental Surgeons working under the Respondents. The Applicant is seeking parity in the date of application of DACP for the Dental Surgeons with the Medical Officers of Central Health Service (CHS). The following reliefs have been sought:



"i. Direct the Respondents to implement the DACP Scheme wef 5/04/2002 as has been done for

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similarly situated Medical Doctors of Teaching sub cadre.

ii. Declare that the Applicant is entitled to be promoted as Associate Professor wef 17/07/2003 and Professor wef 17/07/2007, with all benefits.

iii. Declare that the Applicant is entitled to difference of back wages up to date.

iv. Pass any other order/directions as this Honourable Tribunal may deem fit and proper in the interest of justice."

2. The Applicant was appointed on 15.05.2001 as Assistant Professor (Dental Surgery) through the Union Public Service Commission (UPSC) and joined in the Lady Hardinge Medical College and Associated Hospitals, under the Ministry of Health and Family Welfare (MH&FW), on 17.07.2001. The scale of pay given to the Applicant was Rs. 10,000-15,200 (pre-revised). He was involved in teaching, clinical, administrative and research work.

3. The Fourth Central Pay Commission (IV CPC) had, *inter alia*, given the following recommendations about Medical officers :

"11.72. There are about 344 group A posts of allopathic doctors in various ministers/departments not belonging to the organized health services. They may be given the replacement scales prescribed for general duty officers of the Central Health Service.

11.73. There are about 120 posts of group B allopathic Doctors in various ministries/departments in the pay scales of Rs.650-1200 and Rs.650-960 for which the qualifications for recruitment is MBBS degree. We recommend that these posts may be upgraded and given the pay scale of Rs.2200-4000.

11.74. The total number of posts of dental surgeons in the Government of India is 65. Of these, 45 are in the Ministry of Health and Family Welfare and 17 in the Department of Railways and three in the Department of Coal. These dental surgeons do not belong to any organized service.

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Ministry of Health and Family Welfare reviewed the position and declared the post of 'dental surgeon' a medical post. Most of the posts of the dental surgeons are in the scale of Rs.650-1200.

11.75. It has been represented that there should be parity in pay scales and status of dental surgeons and allopathic doctors because the nature of the duties, duration and content of their respective course, are comparable. Internship, which was previously not compulsory for dental surgeons, has been made compulsory from 1984. The Ministry of Health and Family Welfare has recommended such parity.

11.76. The promotion prospectus of dental surgeons are said to be poor, and it has been presented that these should be comparable with general duty officers of Central Health Service.

11.77. There is no significant difference between the levels of minimum qualifications, course content and period of internship, etc. in BDS and MBBS course. Taking all relevant factors into consideration, we recommend that dental surgeons may be included in Central Health Service/Railway Medical Service and given the pay scales applicable to general duty officers of these services. With the inclusion in the respective medical services, we recommend that recruitment to the posts of dental surgeons may also be made through a competitive examination."

On 10.04.1989 there was a settlement between the first Respondent, MH&FW, and the Joint Action Council of Service Doctors about better career opportunities for the doctors. The Memorandum of Settlement is placed at pages 25-27 of the paper book. The settlement, *inter alia*, accepted the recommendations of the IV CPC regarding the status of the Dental Surgeons by recording in the paragraph 4.2 of the settlement that:

"Dental surgeons will be treated on par with medical officers"

The Fifth Central Pay Commission (V CPC) recommended Dynamic Assured Career Progression Scheme (DACP) for the officers of the health services. The first Respondent issued an order dated

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5.04.2002 accepting the recommendations of the V CPC for officers of the CHS. It was, *inter alia*, provided that:

"(ii) The Specialists officer of the Non Teaching and Public Health sub cadres will be promoted from Specialist Grade II (Junior Scale) (Rs.10000-15200) to Specialist Grade II (Senior Scale) (Rs.12000-16500) on completion of 2 (two) years of regular service. Specialist Grade II (Senior Scale) officer with 4 (four) years' regular service as Specialist Grade II (Senior Scale) will be promoted to Specialist Grade I (Rs.14300-18300). In the Teaching sub cadre Assistant Professor (Rs.10000-15200) will be promoted to Associate Professor (Rs.12000-16500) on completion of 2 (two) years of regular service in the grade of Assistant Professor. Associate Professor with 4 (four) years of regular service will be promoted to the grade of Professor (Rs.14300-18300). In other words, officers of Teaching, non teaching and Public Health sub cadres will be promoted to Specialist Grade I/Professor (Rs.14300-18300) on completion of 6 (six) years of service. Specialist Grade II (Super Specialialities)/Associate Professor (Super Specialities) in the pay scale of Rs.12000-16500 will be promoted to Specialist Grade I/Professor (Rs.14300-18300) on completion of 4 (four) years of regular service in the grade."

It was also provided that the aforesaid Scheme would be effective prospectively from the date of issue of the order. The Scheme was extended to the Dental Officers by order dated 25.08.2006, stating therein the scheme would be applicable prospectively from the date of issue of the order. Orders extending DACP up to the Senior Administrative Grade for officers of CHS and Dental Doctors were issued on 29.10.2008 under the scales/Grade Pay prescribed by the VI CPC.

4. Meanwhile, Medical Officers belonging to CHS had been promoted to the grade of Associate Professor in the scale of Rs. 12,000-16,500 by order dated 11.03.2005 with effect from 2003 and 2004, depending on the date of completion of two years service in

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situated doctors, which will be evident from the paras hereinafter appearing.

Consequent upon being selected by the U.P.S.C., I joined as Asstt. Professor in the Lady Hardinge Medical College and associated Hospitals on 17.07.2001.

It is a matter of regret that doctors/medical colleagues similarly situated as me received their promotions to the post of Associate Professor after two years of service as Asstt. Professor and many other medical colleagues were admittedly junior to me in particular in the matter of appointment as Assoc. Professor.

Others though have been promoted as Associate Professor upon completion of a period of two years as Asstt. Professors were appointed by the same very U.P.S.C. for similar post and pay scales having similar education, internship, and experience and with similar duty timings and patient care requirements.

I had made various representations on the subject vide my communications dated 31.03.2004 and 05.09.2006 and 8/11/06.

It is an admitted position that the Fourth Pay Commission, and subsequently the 5th and 6th Pay Commissions had recommended parity in the pay scales for Dental and Medical colleagues.

It is also an admitted position that far back in 1989 Ministry of Health and Family Welfare duly executed Memorandum of Understanding with Joint Action Council of Service Doctors (JACSD) for parity in all matters.

As aforesaid, Medical Colleagues similarly situated as me received benefit by virtue of DACP Scheme which came into effect from 2002 vide letter No. 21/14/97-PC (H)/CHS-V dated 05.04.2002, whereas DACP Scheme benefit has only been extended to me by letter No.A 45012/1/2002-CHS-VI dated 25.08.2006.

However, the latest order of extension of DACP Scheme upto SAG level has been extended to both Dental and Medical doctors of CHS by the same letter no. F.No. A 45012/2/2008-CHS. V, dated 29/10/08.

From the aforesaid facts, it is quite apparent that there is evident disparity, discrimination and step motherly treatment meted out to me in the previous DACP Scheme, in comparison to my Medical colleagues who are similarly situated.

In this view of the matter, till date I have suffered a loss of 3 years. Accordingly, if the scheme is to be applied by the

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the grade of Assistant Professor. The Applicant made representations on 26.03.2004 and 27.02.2006 for application of the same norms as applied to the CHS Medical Officers for grant of higher grade of Associate Professor after two years of service in the grade of Assistant Professor. The Lady Hardinge Medical College (hereafter the Medical College) recommended the case of the Applicant for promotion as Associate Professor by its letter dated 1.04.2006. He gave other representations on 2.09.2006 and 24.11.2006, after the order dated 25.08.2006 extending the benefit of DACP to the Dental Officers (Teaching) had been issued, for giving the benefit retrospectively from the date it was extended to the Medical Officers of the CHS. He pleaded that it would otherwise be discriminatory *vis-à-vis* the Medical Officers, who would have considerable lead over Dental Officers. The representation was forwarded by the Medical College for favourable consideration to the first Respondent, MH&FW, on 15.09.2006 and 18.01.2007. It may be mentioned that the Applicant was promoted to the post of Associate Professor by order dated 17.10.2006. The Medical Officers of the CHS were further promoted to the grade of Professor in the scale of Rs. 14,300-18,300 (pre-revised) by order dated 10.12.2008.

5. After the extension of the DACP to the SAG by the order dated 29.10.2008, the Applicant again pleaded for application of the DACP to the Dental Officers with effect from the same date it was given to the Medical Officers of the CHS. The representation, *inter alia*, stated thus:

"However, I found that though promotion has been granted to me with effect from 17.07.206, there is apparent evident discrimination qua my promotion and promotion of similar

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DACP Scheme could not be extended to the Applicant from the year 2003.

7. The Respondents, *per contra*, contend that the Dental Doctors in the Central Government Hospitals are governed by the provisions of Dental Posts Recruitment Rules, 1997, which has the following provisions:

- i) Assistant Professor (Rs. 10,000-15200) with five years of regular service are to be promoted to the post of Associate Professor (Rs.12000-16,500) and
- ii) Associate Professor (Rs.12000-16500) with Six years regular service as Associate Professor or 10 years combined service as Assistant and Associate Professor with two years regular service as Associate Professor are to be promoted as Professor (Rs.14300-18300).

It was further argued that the DACP Scheme would only apply prospectively and hence the Applicant's plea for giving retrospective effect to the scheme cannot be acceded to.

8. There is no force in the argument of the Respondents. Although no Recruitment Rules have been placed on record, yet the existence of such recruitment rules would not preclude the Applicant from getting the benefit of DACP. The DACP Scheme is akin to the Assured Career Progression Scheme, which is applicable to the non-technical employees regardless of the recruitment rules for promotion. These schemes provide special dispensation to protect against stagnation. The fact that the Respondent-MH&FW had given the benefit of the DACP Scheme to the Dental Surgeons later on gives lie to the argument of the Respondents because it is not their case that it was

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given after amending the recruitment rules. It is also not the case of the Respondents that the recruitment rules applicable to the Medical Officers of the CHS were amended. These schemes are governed by the executive instructions and not by statutory recruitment rules and the rules of promotion do not interfere with the schemes. The paragraph 4 of the counter affidavit shows the ambiguity in the stand of the Respondents in which it is stated that the DACP was extended to the Dental Surgeons in pursuance of the Memorandum of Agreement of 1989 already adverted to above. Paragraph 4 of the counter affidavit is quoted below:

"4. The above DACP Scheme was not granted to Dental Doctors at that time. However, considering the Dental doctors at par with the Medical doctors in pursuance to the Memorandum of settlement signed between Ministry of Health and Family Welfare and the Joint Action Council of Service Doctors (JACSDO), the case for granting of DACP to Dental Doctors was taken up with Department of Personnel and Training & Department of Expenditure. Accordingly, after obtaining their approval, the Scheme of DACP was implemented in respect of Dental doctors vide order No.A 45012/1/2002-CHS VI dated 25.08.2006 with effect from the date of issue of the order i.e. w.e.f. 25.08.2006. According to this DACP Scheme, Dental doctors in the Teaching side, Assistant Professor (Rs.10,000-15,200) will be promoted to the post of Associate Professor (Rs.12,000-16,500) on completion of two years of regular service in the Grade. Thereafter, Associate Professor with four years of regular will be promoted to the post of of Professor (Rs.14,300-18300). True copy of DACP for Dental Doctors introduced vide order dated 25.8.2006 is Annexure R-3."

9. It is clear that the reason for not extending DACP Scheme to the Dental Surgeons is purely administrative negligence and no principles are involved in this. This is an arbitrary act, which is also discriminatory towards the Dental Surgeons *vis-à-vis* the Medical Officers of CHS. There is no reason why the Applicant should suffer for the mistake of the Respondent-MH&FW.

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impugned communication dated 25.08.2006 I would be required to continue to the post of Assoc. Professor for anotehr period of 4 years till I qualify for the post of Professor.

It is also relevant to point at this juncture that with the up gradation of the Deptt. Of Dental & Oral Surgery at Lady Hardinge Medical College and Associated Hospitals would certainly suffer as starting of PG Course in OMFS would be delayed and thus hampering appropriate and proper patient care and service to the society.

In the aforesaid circumstances, I humbly pray that justice be met out to me and that promotion as Associate Professor with all benefits be granted to me with effect from 17th July, 2003, the date on which I completed two years as Asstt. Professor, as in the case of my Medical Colleagues, vide the same office memorandum."

6. The arguments on behalf of the Applicant have stressed that the recommendations of the IV CPC for parity in the scales of pay of the Dental Surgeons and the Medical Officers of the CHS had been accepted by the Government by the settlement between the Joint Action Council of Service Doctors and the MH&FW in August 1989. The Government was bound to extend the DACP to the Dental Surgeons from the same date as given to the Medical Officers of the CHS in the light of the above settlement. The action of the first Respondent in not extending the DACP to the Dental Surgeons from the same date it was given to the Medical Officers of the CHS was arbitrary and in violation of the Article 14 of the Constitution by being discriminatory, contended the learned counsel for the Applicant. It was also pointed out that the benefit of the recommendations of the VI CPC, extending DACP to the SAG, was given to both the Medical Officers of CHS and the Dental Surgeons from the same date, by the same order. The learned counsel would conted that it would only show that there had been serious mistake on the part of the Respondent-MH&FW, because of which the



10. In the result the OA succeeds. The Respondents would pass an order granting the benefit of the DACP Scheme to the Applicant two years from the date of his joining as Assistant Professor, subject to fitness as prescribed in the DACP Scheme. The Applicant would be eligible for all consequential benefits including the payment of arrears. The above directions would be complied with within three months of receipt of a certified copy of this order. There will be no orders as to costs.


(L.K. Joshi)
Vice Chairman (A)


(V.K. Bali)
Chairman

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