

**Central Administrative Tribunal  
Principal Bench, New Delhi**

**O.A. No. 1143/2018**

**New Delhi, this the 17<sup>th</sup> day of November 2020**

Through video conferencing



**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman  
Hon'ble Mr. A. K. Bishnoi, Member (A)**

Dr.Arпита Roy, aged 50 years  
w/o Sh. Abhijit Roy  
working as SMO (Homeopathy)  
CGHS Tilak Nagar Dispensary, New Delhi  
R/o GH-8/546, PaschimVihar  
New Delhi.

...Applicant

(through Sh. Yogesh Sharma)

Versus

1. Union of India through the Secretary (Ayush)  
Ministry of Health & Family Welfare  
Department of AYUSH, AYUSH Bhawan  
B Block, GPO Complex, INA  
New Delhi-110023.
2. The Additional Secretary & Director General (CGHS)  
Ministry of Health & Family Welfare  
Govt. of India, Nirman Bhawan, New Delhi.
3. The Additional Director CGHS  
North Zone New Rajinder Nagar, New Delhi.

...Respondents

(through G.S. Virk)

## Order (Oral)

**Mr. A. K. Bishnoi :**

Briefly, the facts of the case are as follows:

- (i) The applicant joined Sashastra Seema Bal(hereafter referred as SSB), Cabinet Secretariat as Medical Officer (Homeopathy) on 24.02.1997, in the pay scale of Rs. 2200-4000/- (Annexure A/9) along with certain other persons. In the year 2006, she along with a number of other Medical Officers was declared as surplus and was placed on surplus staff establishment of Ministry of Home Affairs (Annexure A/10). She was offered a post in CGHS Delhi, was relieved from SSB on 30.04.2007 and joined CGHS Delhi, on 03.05.2007 along with certain Medical Officers (Homeopathic)namely, Dr. K. Sudhakar Reddy, Dr. Bidhan Rana and Dr. P.T. Chimurkar. She was subsequently promoted to the post of Senior Medical Officer (Homeopathy) with effect from 03.05.2011.





(ii) In the year 2008, the Scheme of Dynamic Assured Career Progression (DACP) was introduced, initially for Allopathic Doctors, which was later extended to cover Medical Officers of Homeopathy also. The expectation of the applicant along with some others was that they would be given the benefit of this Scheme taking into account the period of service they had rendered in their previous position as Medical Officers (Homeopathy) in the Cabinet Secretariat, specifically SSB. However such benefit was not given and only the service in CGHS from 03.05.2007 was being counted.

(iii) In this context, some of the persons approached this Tribunal's different Benches. It was ruled by the order dated 21.07.2015 of the Hyderabad Bench in the case filed by Dr. K. Sudhakar Reddy in OA No. 760/2014 that his past services as Medical Officer in SSB Cabinet Secretariat from 18.11.1997 to 30.04.2007 be considered for financial upgradation under DACP Scheme. Vide order dated 22.11.2016, this benefit was granted to him. In OA No. 2152/2014, the Mumbai

Bench of this Tribunal granted the same benefit to Dr. P.T. Chimurkar vide judgment dated 05.12.2016. The same was implemented by the respondent vide order dated 08.02.2018 and the applicant in the said OA was granted the same benefit.



2. The applicant being similarly situated as the above mentioned persons gave representation dated 18.04.2017 and 13.02.2018 requesting for the same benefits but the same was rejected vide impugned order dated 22.02.2018 (Annexure A/1). Aggrieved by the rejection, the applicant has filed this OA seeking the following reliefs:

“(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 22.2.2018(Annex. A/1), declaring to the effect the whole action of the respondents not considering the case of the applicant for granting financial upgradation under DACP scheme by counting the service rendered by the applicant in SSB Cabinet Secretariat is illegal, arbitrary and discriminatory and consequently, pass an order directing the respondents to consider the case of the applicant for granting the benefits of financial upgradation under DACP scheme from due date by taking account the date of appointment of the applicant as 24.2.1997 in SSB, Cabinet Secretariat with all the consequential benefits by extending the benefits

of Hon'ble Tribunal, Hyderabad Bench judgment dated 21.7.2015 in OA No. 760 of 2014 and the Hon'ble Tribunal Bombay bench judgment dated 45.12.2016 in OA No. 2152/2014.

(ii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicants along with the costs of litigation."



3. In the counter reply filed by respondent no. 1, it has been stated that as per DoP&T OM dated 28.02.1990, the benefit of past service cannot be claimed by an employee declared surplus towards fixation of seniority in the post in which she is readjusted. It has also been stated that as per DoP&T OM dated 25.04.2011, the DACP Scheme is applicable only prospectively.

4. As regards the contention of the applicant that similarly placed Medical Officers have been granted the same relief as a consequence of the judgments referred in the OA, it has been stated that the cases were different and distinguishable from the case of the applicant. However, no reasons have been given.

5. Rejoinder has been filed on behalf of the applicant where it has been stated that the issue of seniority is not relevant to the present case as the same has not been sought by the applicant. The only point in the present OA is that under the DACP

Scheme past services of the applicant should be taken into account for grant of financial upgradation as was done in the case of similarly situated persons.



6. We heard Sh. Yogesh Sharma, learned counsel for the applicant and Sh. G.S. Virk, learned counsel for the respondents.

7. Learned counsel for the two sides further expounded upon the contentions made in the pleadings.

8. We have carefully gone through the pleadings on record as also the submissions made by the learned counsels for the parties.

9. The short point involved in the present OA is that when similarly placed persons like the applicant have been granted certain benefit, can the same be denied to the applicant? For clarity, the impugned order is reproduced below-

“ I am directed to refer to representations of Dr. Arpita Roy and Dr. Bidhan Rana dated 18.04.2017 and 24.04.2017 respectively, requesting therein for grant of financial upgradation under Dynamic Assured Career Progression Scheme on the basis of similar benefits given to Dr. Kondreddy Sudhakar Reddy, SMO(Homeo) in compliance with the directions of Hon'ble CAT, Hyderabad Bench.



2. The matter has been considered by the Competent Authority in consultation with Department of Personnel & Training and Department of Legal Affairs. As. Dr. Kondreddy Sudhakar Reddy, SMO(Homeo) was granted financial upgradation under DACP Scheme as per directions given by Hon'ble CAT, Hyderabad Bench, your request for financial upgradation on the basis of similar benefits given to Dr. Kondreddy Sudhakar Reddy may not be acceded to."

10. The operative portion of the order of the coordinate Bench of this Tribunal referred to in the impugned order, is extracted below:

"12. Having heard both sides counsel and after considering the facts and circumstances of the case, we are of the considered view that this O.A. is squarely covered by the judgment of the Hon'ble Supreme Court in State of Haryana & Anr. Vs. Deepak Sood & Others (supra). Hence, this OA is liable to be allowed by following the law laid down by the Hon'ble Supreme Court in Civil Appeal No. 4446/2008 & Batch. On the other hand, the judgment of the Hon'ble Supreme Court relied on by the respondents in Union of India & Ors. Vs. K. Savitri & Ors, is not applicable to the present case inasmuch as the said judgment is on the issue of counting of past service of the redeployed staff for seniority in the new organization.



13. In the result, the O.A. is allowed by holding that the applicant is entitled for counting the service rendered by him as Medical Officer in SSB Cabinet Secretariat from 18.11.1997 to 30.04.2007 for time bound financial upgradation under Dynamic Assured Career Progression (DACP) Scheme. Accordingly, the respondents are directed to consider the case of the applicant for financial upgradation under DACP Scheme by considering his past service from 18.11.1997 to 30.04.2007 as Medical Officer in SSB, Cabinet Secretariat. The respondents shall comply with the order within a period of two months from the date of receipt of copy of this order. No order as to costs.”

11. The relevant portions of the order passed by the Mumbai Bench in OA No. 2152/2014 is as follows:

“1. The applicant was appointed as Medical Officer (Homeo) in Sashastra Seema Bal (‘SSB’ in short) by the order dated 21.05.98 in the pay scale of Rs. 8000-13500/-. He was on probation for a period of two years w.e.f. 19.03.1998. The applicant was confirmed on 19.03.2000 after completion of probation period.

2. Thereafter all the eight posts of Medical Officer (Homeo) in SSB were declared surplus vide order of the Director General, SSB, Ministry of Home Affairs, New Delhi dated 16.03.2006, issued in pursuance of the Cabinet Secretariat order dated 20.05.1999. That on recommendation of UPSC vide order dated 10/13 April 2007 the applicant





was redeployed as Medical Officer (Homeopathy) under Ministry of Health and Family Welfare and was relieved from SSB on 30.04.2007 with direction to report to the Additional Director, CGHS, Nagpur for the post of Medical Officer (Homeopathy)/Research Officer (Homeopathy) vide order dated 30.04.2007 of Ministry of Home Affairs, Sashastra Seema Bal New Delhi.

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18. Learned counsel for the applicant has relied on a recent judgment passed by CAT, Hyderabad Bench (Dr. Kondreddy Sudhakar Reddy vs. Union of India & 3 ors., OA No. 760/2014 decided on 21.07.2015). We have perused the said judgment. The grievance of the applicant before the Hyderabad Bench and before this Bench is similar. The present original Application has been filed challenging the action of the respondents in not counting the service of the applicant as Medical Officer in SSB Cabinet Secretariat prior to appointment of the applicant as Medical Officer in Central government Health Service for the purpose of financial upgradation under DACP Scheme and for time bound promotion.”

12. The Mumbai Bench of the Tribunal, taking into account different pronouncements and specifically, the judgment passed in OA No. 760/2014 by the Hyderabad Bench gave the following order:



“20. We allow this OA. The order dated 05.06.2014 issued by the Ministry of Health and Family Welfare bearing No. A. 32022/01/2014-E-I(AYUSH) is set aside. The respondents are directed to reckon the service of the applicant rendered as Medical Officer in SSB Cabinet Secretariat for time bound financial upgradation under Dynamic Assured Career Progression Scheme and extend the financial benefit within a period of three months from the date of receipt of a copy of the order. No order as to costs.”

13. We find that the case of the applicant is squarely covered by the judgments of the coordinate Benches of this Tribunal referred above. The applicants in those OAs were identically placed as the applicant herein. The impugned order has been passed without giving any reasons for not granting applicant the relief sought for. It has been merely stated that Dr. Kondreddy Sudhakar Reddy, SMO(Homeo) was given financial upgradation as per directions of the Hyderabad Bench of this Tribunal as such, the request of the applicant for granting similar benefits cannot be acceded to. Even in the counter reply nothing has been said to explain how, if at all, was the case of the applicant different from that in the OA before the Hyderabad Bench in which relief was granted. On the other



hand, a plain reading of the facts indicates that the applicant was identically placed as the applicants of the OA before the Hyderabad Bench as also before the Mumbai Bench. Since the matter relating to similarly placed persons has already been discussed and decided by the coordinate Benches of this Tribunal after considering all relevant facts, issues and law, there is no need to indulge in any further discussion in the present matter.

14. To conclude, in view of the fact that the case of the applicant is squarely covered by the judgment of the coordinate Benches of this Tribunal mentioned above, we allow this OA and set aside the impugned order dated 22.02.2018. The respondents shall provide the same benefits to the applicant as were provided to the applicants in the OA No. 760/2014 and OA No. 2152/2014. This shall be done within a period of three months from the date of receipt of a copy of this order.

There shall be no order as to costs.

**(A. K. Bishnoi)**  
**Member (A)**

**( Justice L. Narasimha Reddy )**  
**Chairman**

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