CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/021/00905/2019

Date of CAV : 21.12.2020.

Date of Pronouncement: 04.01.2021

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

Dr. Ala Narayana S/o Mondaiah,
Aged about 60 years, Occ : Director,
National Institute of Indian Medical Heritage (NIIMH),
(CCRAS, Ministry of AYUSH, Government of India),
Hyderabad – 500 036.
R/o H.No.2-17-25/20/2, Uppal,
Hyderabad-500 039. ...Applicant

(By Advocate : Mr. K.Sudhaker Reddy)

Vs.

1.Union of India, Rep by its Secretary to Government,
Ministry of AYUSH, Government of India,
AYUSH Bhavan, B-Block, GPO Complex,
New Delhi – 110 023.

2. The Secretary, Dept. of Personnel & Training,
Govt. of India, North Block, New Delhi.

3. The Secretary, Dept. of Expenditure,
Ministry of Finance, Govt. of India,
North Block, New Delhi.

4.The Director General, Central Council for Research in
Ayurvedic Sciences, (Ministry of AYUSH, Government of India),
Jawaharlal Nehru Bhartiya Chikitsa Evam Homeopathy
Anusandhan Bhawan, 61-65, Institutional Area,
Opp. D Block, Janakpuri, New Delhi – 110 058. ....Respondents

(By Advocate : Mrs. K. Rajitha, Sr. CGSC)

ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

2. The OA is filed to extend the benefit of DACP scheme to the applicant.

3. Brief facts of the case are that the applicant, who is a medical doctor by profession, is working as Director, National Institute of Medical Heritage under Central Council for Research in Ayurvedic Sciences (for short "***CCRAS"***), Ministry of AYUSH, Govt. of India. Applicant was initially recruited as Asst. Research Officer. His appointment was governed by the CCS (Conduct) Rules and CCS (CCA) Rules, by virtue of GOI Memo dt. 19.04.1991. Later, he was promoted as Research Officer, Asst. Director, Deputy Director. For not being allowed to pursue private practice, NPA has been granted. Applicant claims that the respondents have denied DACP as recommended in the VI CPC and as per orders of the GOI dated 29.10.2008, 25.04.2011, 5.9.2014 & 3.11.2014. Hence, the OA.

4. The contentions of the applicant are that the relief sought is covered by the Hon'ble Principal Bench verdict in OA 2563/2010, dt. 26.11.2013. Ministry of Health & Family Welfare has granted DACP for medical and Dental Doctors on 29.10.2008 and to practitioners of Indian System of Medicines and Homeopathy possessing the medical qualifications approved by the Central Council of Indian Medicines (CCIM)/ Central Council for Homeopathy (CCH) w.e.f. 29.10.2008 vide order dt. 25.04.2011. DACP upto SAG level was implemented for AYUSH Doctors on 5.09.2014 w.e.f.

29.10.2008 based on the judgment of the Hon'ble Principal Bench dt. 26.11.2013. The benefit was also extended to Doctors working in South, North and East Delhi Municipal Corporations based on the Hon'ble Principal Bench verdict in OA No.2712/2016 & batch dated 24.08.2017. Ministry of Health & Family Welfare issued OM dt. 3.11.2014 granting the benefit to Doctors both teaching and non-teaching, working in National Institutes of Ayurveda, Unani, Siddha and Homeopathy (NIA, NIUM, NIS AND NIH) w.e.f. 29.10.2008, after taking concurrence of the Ministry of Finance. Bye-laws 35 & 47, clearly state that FRSR, GFR & instructions of GOI apply mutatis mutandis to the CCRAS. The applicant's professed domain and qualifications are at par with General Duty Medical Officer of CGHS. Ministry of AYUSH is recruiting General Duty Medical Officer and Research Officer through UPSC and when these officers are posted in dispensaries they are called Medical Officers and when posted at Ministry, they are called Research Officers who do not attend to patient care. However, both are paid NPA and for both the officers, extension of DACP is applicable as per GOI orders issued from 2008 to 2014, which specify that work domain is important and not designation. Till 2011, doctors of CGHS belonged to CHS and there was no independent health service for AYUSH doctors. Officers are governed by the bye-laws of CCRAS. The CHS and CCRAS doctors are performing similar nature of duties and they cannot be discriminated based on designations. As per OM dt. 19.09.2019, the Research Officer designation is equivalent to Medical Officer working in the Clinical Unit. CCRAS is an autonomous body like NIA, NIS, NIH, etc. AYUSH doctors working in CHS, National Institutes & CCRAS possess same medical qualifications recognized under Indian

Medical Council Act, 1956/ CCIM 1970 and perform similar nature of duties and their services are governed by the same set of GOI rules. Hon'ble Principal Bench judgment in OA in OA 2563/2010 i.r.o. grant of DACP was implemented for Ayush doctors working in CGHS dispensaries. Doctors working in Allopathy stream and doctors under Ministry of Ayush are at par as held by the Hon'ble Principal Bench in OA 2442/2017 in the case of Dr. K.S. Sethi v. Ministry of Ayush. Applicant is governed by the same set of rules of the Ministry of Ayush. In respect of CCRAS, if there are no rules in respect of a particular service matter, then rules applicable to CHS/ Ayush doctors apply to CCRAS doctors. Representations made were not responded to.

5. Respondents in the reply statement state that CCRAS is an autonomous body engaged in promoting research in Ayurvedic Sciences, under the Ministry of Ayush. Being an autonomous body, CCRAS is not under the direct control of the Govt. of India, but is governed by the Governing Council based on the bye-laws and Memorandum of Association, which cover all matters including service aspects. General Duty doctors and General Duty Medical Officers are recruited by UPSC whereas the applicant was recruited by CCRAS and the nature of duties are different. Therefore, the Recruitment Rules and the method of recruitment are different. Employees of CCRAS are governed by its bye-laws. The GOI has not extended the benefit of grant of DACP to CCRAS and unless GOI agrees, the benefit cannot be extended. The applicant was promoted based on hierarchy and not on all India competition. NPA is given on the basis of qualifications and the nature of duties performed is research. Clause 35 of the Bye-laws relate to superannuation and Clause 47 pertains

to grant of allowances and hence, they have no relation to grant of DACP. The OMs dt. 29.10.2008, 25.04.2011 and 05.09.2014 are applicable to Central Government employees and not to CCRAS since they have not been endorsed to the CCRAS. Applicant is not on par with CGHS doctors, since the qualifications, appointing authority, method of recruitment, nature of duties and responsibilities are different. CGHS doctors are selected by UPSC. Doctors recruited by the Ministry of Ayush through UPSC are not designated as Research Officers and the nature of duties and responsibilities are not related to research work. Applicant has never worked under CGHS and the OMs dated 29.10.2008, 25.04.2011, 05.09.2014, 03.11.2014 are inapplicable to the applicant. Similarly, Hon'ble Principal Bench judgment is not relevant to the applicant. Applicant's cadre is involved in conducting research on diseases and observational studies. He is working in NIMH which does literary research and documentation. Applicant is not governed by CHS Rules and that CCRAS is an autonomous body whose rules are not published in official Gazette. Therefore the claim of the applicant that officers are governed by rules published in official Gazette is incorrect. Applicant is not into clinical practice and as a part of research, treatment of patients is taken up. Employees of CCRAS are not Govt. of India employees and hence, suo motu Ministry of Health & Family Welfare scheme of DACP implemented w.e.f. 29.10.2008 in respect of Medical & Dental doctors is inapplicable to CCRAS employees. Unless the Governing Council takes a decision, no order can be implemented. The Research/ Technical officers of CCRAS are not on par with CHS and further they cannot compare themselves with those working for NIH, NIS, NIUM, etc. as the nature of duties are separate. Hon'ble Principal Bench judgment is

applicable to CGHS doctors. Applicant is not a CGHS/ Ayush doctor. Even the orders of the Hon'ble PB in OA No. 2712/2016, 2771/2016, 2946/2016, 4066/2016, 4192/2016 and 4189/2016, are not applicable to the applicant, since CCRAS is an autonomous body. The judgment pertains to doctors of CHS under different stream performing similar duty of patient care. In the instant case, there is a difference between Ayush doctors of Ministry of Ayush working under CHS versus CCRAS employees, an autonomous body engaged in research. No order issued pursuant to a court judgment by GOI can be made applicable unless a decision is taken to accept by the Governing Council. Applicant cannot compare himself with Dr. K.S. Sethi since she was directly working in the Ministry of Ayush whereas the applicant is neither an Ayush doctor nor working directly under the Ministry of Ayush. He works for CCRAS and nature of duties plus method of recruitment are different with those of Ayush/ CGHS doctors. Even the 7th CPC recommendations were extended when GOI decided to implement for CCRAS. In respect of DACP, Government of India has not extended the benefit of DACP. Applicant has not exhausted remedies available and did not wait for the reply to the representation submitted on 25.09.2019. In the meanwhile the matter has become sub judice.

Applicant filed a rejoinder stating that CCRAS comes under the administrative control of the Ministry of Ayush and the services of CCRAS employees are governed by the same set of laws as are applicable to the Central Government employees. CCRAS is functionally autonomous but comes under the ambit of CCS (CCA) Rules. The applicant submits that duties of general duty medical officers and doctors of CCRAS are different

but the basis of recruitment, recruitment rules, qualifications and nature of duties are identical. The general conditions of service in relation to TA, Pension, DA, superannuation etc. are governed by the Rules of the Govt. of India. Bye-law 47 provides for adopting GOI rules if CCRAS has not framed any rules i.r.o. any particular issue. Appointment of the applicant is governed by the CCS (Conduct) Rules and CCS (CCA) Rule, as amended from time to time, by the Government of India. GOI did not endorse exclusive copies for implementation of CPCs to autonomous bodies. NPA is given because part of duty is clinical one and for possessing the required medical qualification. OMs cited are not endorsed to CCRAS, but to Ministry of Ayush as was the case in respect of CPC orders. CCRAS is also an autonomous body like NIS, NIH, NIUM, etc. like CCRAS and therefore, DACP implemented in these institutions by the Ministry of Health and Family Welfare will apply to CCRAS as well. DACP is a part of 6th CPC and having implemented 6th CPC, a part of it cannot be ignored to be implemented. The mission of CCRAS has many parameters and not observational study. CCRAS also treats general public through OPD/IPD/ Specially designated clinics, implements National Health Programmes and analyzes the patient data generated through research studies for effective treatment. NPA is paid from 4th CPC onwards to doctors whose posts are clinical and for treating patients at large. 6th CPC implemented for autonomous bodies and CCRAS can be no exception. The decision not to grant DACP is hostile discrimination and violative of Articles 14 & 16 of the Constitution. The order of the Hon'ble Principal Bench in OA 2563/2010 dt. 26.11.2013 states that since the Government has accepted the 6th CPC recommendations, it has to follow it fully without any

reservation. CCRAS has implemented 6th CPC and therefore, the DACP has to be implemented. In the case of Delhi Municipal Corporation, they have adopted CCS (CCA) Rules and similarly, as per CCRAS bye-laws, CCS (CCA) Rules apply mutatis mutandis. Therefore, when DACP is made applicable to Delhi Municipal Corporation pursuant to the judgment of the Hon'ble Principal Bench in OA Nos. 2712/2016, 2946/2016 etc, the same judgment applies to CCRAS. Respondents have admitted that if the Governing Council decides, then GOI orders can be made applicable which means GOI orders are applicable to CCRAS.

Respondents have filed additional reply statement wherein they state that as per OM dt. 2.09.2008, Department of Ayush extended the in situ promotion to medical doctors and non medical scientists to all research councils under it. Applicant was given the 1st insitu promotion in level S-3 on 21.9.2003 and 2nd insitu promotion in S-4 on 21.09.2008, which is the highest grade in CCRAS. After availing benefits of insitu promotion, the applicant is seeking promotion under DACP, which is not permissible since there cannot be two progression schemes in the organization. The appointment of the applicant is governed by the Memorandum of Association & Bye-laws as applicable to the Council. In respect of disciplinary matters, CCS (CCA) Rules are applied. NPA is given for not pursuing private practice. Bye-laws are framed by the Governing body. The applicant is raising the same issues which have been decided in OA No. 926/2019. The Research Officer/ Assistant Director in Research Council conducts research and observational studies. Mandate of NIMH is to conduct research in Ayurvedic formulations and literary documentation. Policy matters decided by the GOI are suo motu not applicable to CCRAS.

It is for CCRAS to decide as to whether the benefit of a particular scheme is to be extended or not.

6. Heard both the council and perused the pleadings on record.

7. I The dispute is about extending the benefit of DACP scheme to the applicant. It is not in dispute that the applicant was appointed as Asst. Research Officer in the respondents organization and thereafter, rose to the rank of Director of NIIMH. The objectives of respondents organization are as under:

i) To formulate aims and patterns of research on scientific lines in Ayurvedic Sciences.

ii) To undertake any research or other related programmes in Ayurvedic Sciences including undergraduate, post-graduate and post-doctoral educational programmes in Ayurvedic Sciences

iii) To prosecute and assist in research, the propagation of knowledge and experimental measures generally in connection with the causation, mode of spread and prevention of diseases.

iv) To initiate, aid, develop and coordinate scientific research in different aspects, fundamental and applied aspects of Ayurvedic Sciences and to promote and assist institutions of research for the study of diseases, their prevention, causation, treatment and remedy.

v) To provide technical and financial support for research for the furtherance of objectives of the Central Council.

vi) To exchange information with other institutions, associations and societies interested in the objects similar to those of the Central Council and especially in observation and study of diseases in East Asia and in India, in particular.

vii) To establish, equip and maintain laboratories, libraries, institutions and other facilities necessary to fulfil the Objectives of the Central Council.

viii) To prepare, print, publish and exhibit any papers, posts, pamphlets, periodicals, standard treat protocols and books for furtherance of the objectives of the Central Council and to contribute to development of such literature.

As can be seen from the above, respondents organization where the applicant is working, is a research organization and mostly into research relating to Ayurvedic formulations and literary documentation. The applicant is a qualified doctor possessing the requisite qualification. For not being allowed to undertake private practice, he was granted NPA, as has been given to many other Doctors in GOI who are on the clinical side. It is important to note that NPA has been granted in view of his medical qualification as a doctor and not for reasons of holding a particular post. On the ground of having been granted NPA, the applicant cannot equate himself with CGHS/ CHS etc. doctors who too were granted NPA. We must observe at this juncture that, equation of posts cannot be based on a single factor like NPA. There are many factors describing the aspect of

duties discharged, which have to be looked into and that too, as dictated by the organizational dictates. Essentially there are 4 factors, other than pay, which determine the equivalence of posts. They are the nature and duties of a post, responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged; the minimum qualifications, if any, prescribed for recruitment to the post; and the salary of the post. At least, if all the first 3 conditions are shown to be the same by the applicant in respect of the post he holds with the posts he is comparing in respect of CGHS/CHS stream then he had a case. The applicant has failed to produce documents to substantiate his assertion that he is on par with those working in CGHS/CHS. We take support of the Hon'ble Supreme Court observations in **S.I. Rooplal And Anr vs Lt. Governor** on 14 December, 1999 in CASE Appeal (Civil) 5363-64 of 1997, as under, to make the above remarks.

> *While determining the equation of two posts many factors other than `Pay' will have to be taken into consideration, like the nature of duties, responsibilities, minimum qualification etc. It is so held by this Court as far back as in the year 1968 in the case of Union of India and Anr. v. P.K. Roy and Ors, [1968] 2 SCR 186. In the said judgment, this Court accepted the factors laid down by the Committee of Chief Secretaries which was constituted for settling the disputes regarding equation of posts arising out of the States Reorganisation Act, 1956. These four factors are : (i) the nature and duties of a post, (ii) the responsibilities and powers exercised by the officer holding a post; the extent Of territorial or other charge held or responsibilities discharged; (iii) the minimum qualifications, if any, prescribed for recruitment to the post; and (iv) the salary of the post. It is seen that the salary of a post for the purpose of finding out the equivalency of posts is the last of the criterion. If the earlier three criteria mentioned above are fulfilled then the fact that the salaries of the two posts are different, would not in any way make the post `not equivalent'. In the instant case, it is not the case of the respondents that the first three criteria mentioned hereinabove are in any manner different between the two posts concerned. Therefore, it should be held that the view taken by the tribunal in the impugned order that the two posts of Sub-Inspector in the BSF and the Sub-Inspector (Executive) in Delhi Police are not equivalent merely on the ground that the two posts did not carry the same pay-scale, is necessarily to be rejected. We are further supported in this view of ours by another judgment of this Court :in the case of Vice-Chancellor, L.N. Mithila University v. Dayanand Jha. [1986] 3 SCC 7 Wherein at para 8 of the judgment, this Court held: "Learned counsel for the respondent is therefore right in contending that equivalency of the pay scale*

is not the Only factor in judging whether the post of Principal and that of Reader are equivalent posts. We are inclined to agree with him that the real criterion to adopt is whether they could be regarded of equal status and responsibility xxx The true criterion for equivalence is the status and the nature and responsibility of the duties attached to the two posts, xxx"

Therefore, in our opinion, the finding of the tribunal that the posts of Sub-inspector in the BSF and Sub-Inspector (Executive) in Delhi Police are not equivalent, is erroneous

II. In the case of the applicant, he worked for NIIMH under CCRAS, which has its own bye-laws and is governed by a Governing Council/ Body. The Governing Council has the final say in regard to any decision pertaining to CCRAS. The independence in decision making is due to the fact that CCRAS was registered as a Society under the Societies Registration Act, with full autonomy. One cannot deny the fact that CCRAS is working under the aegis of Ministry of AYUSH and therefore, its directions are to be adhered to, is the repeated assertion of the applicant. In this direction, the applicant cited the bye-laws 35 & 47 of CCRAS.

"35. The Fundamental and Supplementary Rules and General Financial Rules of Government of India as amended from time to time shall apply mutatis mutandis to employees of the Central Council."

xxxx

"47. In respect of matters not provided for in these regulations the rules as applicable to Central Government servants regarding the general conditions of service, pay, allowances, T.A. and daily allowances, foreign service terms, deputation in India and abroad, etc. and orders and decisions issued in this regard by the Central Government from time to time shall apply mutatis mutandis to the employees of the Central Council"

We agree with the contention of the applicant that GOI has a role to play in directing the working of CCRAS. However, it is important to note that CCRAS is an autonomous body and the Governing Council has the independence to adopt the direction of GOI or take an independent view in the matter. The Hon'ble Supreme Court of India in Dharmendra Prasad vs

Sunil Kumar on 6 December, 2019 in Civil Appeal No.9247 of 2019 (arising out of SLP (Civil) No. 23787 of 2018), has held as under:

> *2. The High Court vide impugned order has directed the Uttarakhand Pey Jal Nigam1, a creation of the Statute i.e. the Uttar Pradesh Water Works and Sewer Arrangement Act, 1975, to determine the seniority of the Junior Engineers strictly as per Regulation 23 of the 1 for short, 'Nigam' Uttar Pradesh Jal Nigam Subordinate Engineering Service Regulations, 19782. Regulation 23 contemplates that the seniority of a person appointed in any branch of service in any category of post shall be made as per the date of substantive appointment.*
> *xxx*
> *19. We do not find any merit in the argument raised by the State that the seniority has to be fixed as per Rule 5 of the Uttarakhand Government Servant Seniority Service Rules, 2002. Such Rules were not adopted to be applicable to the Nigam. The Rules were approved by the Board of the Nigam on 24 th September, 2007 proposing that the provision shall be made in the proposed service regulations but the Rules were made applicable in the year 2011 only. Such is the finding recorded by the High Court which is not disputed by the appellants or by the writ petitioners. Such Rules have been framed under the proviso to Article 309 of the Constitution and they are not applicable to a creation under a Statute. These Rules are applicable to government servants in respect of whose recruitment and condition of service Rules may be or have been made by the Government under the proviso to Article 309 of the Constitution. Since the employees of the Nigam are not government servants nor are their service conditions governed by Rules framed under the proviso to Article 309 of the Constitution, therefore, such Rules unless adopted by the Nigam cannot be extended to the employees of the Nigam.*

By telescoping the principle laid down by the Hon'ble Apex Court as at above, to the case on hand, we observe that the respondents Governing Council has not passed any resolution to grant DACP as has been referred to in different OMs cited by the applicant. Therefore, applicant seeking the grant of DACP is beyond the purview of law as expounded above.

Further the Hon'ble Supreme Court has time and again expressed the view that the Courts should not interfere with the decision of autonomous bodies and if necessary, only to a minimal extent in matters relating to the interpretation of the bye laws or rules and regulations of the autonomous bodies as under:

> *In light of the facts and circumstances of this case and the submissions made by the learned counsel on both sides, it can be concluded that NWDA had framed*

its regulation the CPF Rules, 1982 and they were duly approved by the Governing Body of NWDA. As NWDA is an autonomous body under the Ministry of Water Resources, it has framed it own bye-laws governing the employees. It has been time and again reiterated that the Court must adopt an attitude of total non-interference or minimal interference in the matter of interpretation of Rules framed by autonomous institutions. In Chairman & MD, Kerala SRTC vs. K.O. Varghese and Others, (2007) 8 SCC 231, this Court held:

"KSRTC is an autonomous corporation established under the Road Transport Corporation Act, 1950. It can regulate the service of its employees by making appropriate regulations it that behalf. The High Court is not correct in thinking that there is any compulsion on KSRTC on the mere adoption of Part III of KSR to automatically give all enhancements in pension and other benefits given by the State Government to its employees."

Thus, as the appellants are governed by the CPF Rules1982, the O.M. applicable to Central Government employees is not applicable to them.

In the instant case, the bye-laws cited by the applicant speak about superannuation and grant of allowances. Their application to the case of the applicant is remote. Moreover, applicant has not produced any document directing CCRAS to implement DACP. The absence of a direction in this regard can be understood from the fact that CCRAS has introduced insitu promotion as per OM dt. 2.9.2008 and the applicant has gained from the same. He was promoted to Level S-3 and S-4 on insitu basis in the years 2003 & 2008 respectively. Insitu promotion is a career progression scheme and requires no vacancy to be available to grant the promotion which is made personal to the employee. The Ld. counsel for the applicant submitted that there was delay in granting the insitu promotions. Delay apart, the applicant was a beneficiary of the insitu promotions. Having availed the insitu promotions, the applicant should have introspected as to whether he could claim for another career progression under DACP. We are surprised that he could pursue such a claim even after availing S-4 insitu promotion nearly 12 years back. An employee can avail the benefits of any one particular career progression

scheme and not from all schemes introduced at different intervals of time. For eg. in Postal Department the postal Assistants were asked to choose between Time bound promotions existing or opt for the newly introduced ACP/MACP schemes, because both are financial upgradations, with no change in responsibilities. In case of CCRAS, it appears, that GOI thought it fit not to introduce DACP because of the ongoing insitu promotions. More over there was neither a direction from GOI nor a Governing Council resolution adopting the directive, in order to grant the relief sought. This is the crux of the issue which obviously is not inclined in favour of the applicant. While making the above observations, we are supported by the judgment of the Hon'ble Delhi High Court in **Dr. Amitabh Misra & Ors. vs Union Of India & Ors** on 30 May, 2012 IN W.P.(C) 3336/2012 as under:

> *The petitioners are aggrieved by the order dated 16.02.2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.3057/2011 whereby their claim for benefits under the Dynamic Assured Career Progression **Scheme** (**DACP**) in accordance with the Government of India Resolution No.1/1/2008-IC dated 29.08.2008 and certain other office memoranda was rejected.*
>
> *2. The petitioners are doctors and they are working as Medical Officers in different Institutes under the Indian Council of Agricultural Research. The petitioners sought the benefit of the said Government of India Resolution dated 29.08.2008 whereby the Dynamic Assured Career Progression **Scheme** was available for doctors working in the Central Government. Reliance has also been placed by the learned counsel for the petitioners on the Office Memorandum dated 29.10.2008 issued by the Ministry of Health and Family Welfare, Government of India. That OM, however, would be of no help to the petitioners because from the language in the said OM itself, it is clear that **scheme** of **DACP** (Dynamic Assured Career Progression) upto SAG level (Grade Pay of Rs.10000/- in Pay Band-4, Rs.37400-67000) was extended to all Medical/Dental doctors in the Central Government, whether belonging to Organized Service or holding Isolated Posts. Admittedly, the petitioners are not medical doctors in the Central Government, therefore, the said Office Memorandum dated 29.10.2008 would be of no help to them.*
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> *"Insofar as ICAR as a whole is concerned, the revised scales of pay as incorporated in Section 1 and II of Part „A" of the First Schedule to the Rules ibid alone may be adopted. ....."*
>
> *xxx*
>
> *5. It is immediately clear that insofar as the ICAR as a whole is concerned, what has been adopted is only the revised scales of pay as incorporated in Sections (I) and (II) of Part „A" of the First Schedule to the Rules. The word "alone" which has been used in the above extracted portion is of a great significance. It implies*

*that only the revised scales of pay have been adopted and nothing else. The **DACP scheme** has been provided in Sections (I) and (II) of part „A". But, the ICAR has only chosen to adopt the revised pay scales by the use of the word "alone" in the above extracted portion of the said OM dated 03.10.2008. This clearly means that the ICAR have thought it fit not to adopt the **DACP Scheme** insofar as its medical officers/technical employees are concerned.*

*6. The learned counsel for the petitioners had sought to place reliance on a decision of the High Court of judicature of Madras in the case of Union of India & Ors. v. Dr. Deepak Sen & Ors.: W.P.(C) No.12209/2010 dated 12.01.2011. However, that case is clearly distinguishable inasmuch as it pertains to doctors in the Department of Atomic Energy where the department itself had implemented and adopted the **DACP scheme**. In the present case, we have noted that the ICAR has not adopted the **DACP Scheme** and it is also not a Department of the Central Government but an autonomous society registered under the Registration of Societies Act, 1860.*

*7. It may also be pointed out that there is, perhaps, a reason as to why the ICAR did not adopt the **DACP Scheme** because the ICAR had implemented a time bound promotion **scheme** whereunder a five yearly assessment promotion is done from one grade to the next higher grade or advanced increments are granted to the technical employees. It is perhaps because of the existence of this time bound promotion **scheme** that the ICAR thought it fit not to adopt the **DACP scheme** of the Central Government. Be that as it may, in view of the fact that the ICAR has consciously adopted only the revised scales of pay and has not adopted the **DACP Scheme** which also fell within Sections (I) and (II) of Part „A" of the First Schedule to the said rules, the petitioners can have no claim to benefits under the said **DACP Scheme**.*

In view of the above, the applicant is not entitled to claim for DACP.

III. However, the applicant has contended that other national institutes namely NIH, NIS, NIUM, etc. which too are autonomous bodies have extended the DACP benefit. As was expounded earlier, each Institute is independent pursuing its own institutional goals. Depending on the nature of work, mission and objective of the respective Institution, the respective Council takes a decision apt and appropriate as is required to serve organizational interests. Therefore, the applicant cannot compare himself with those in other National Institutes referred to as he is not similarly placed in respect of duties, responsibilities and the organizational environment. Comparing institutions on a simplistic dimension of they being autonomous bodies and asserting that there has been hostile

discrimination is not a logical proposition. Discrimination would arise when employees are similarly placed in the same institution and are governed by similar rules and not when they are working for different institutions with different nature of duties, rules, as observed by the Hon'ble Apex Court in a catena of judgments as under:

a. **T.M.Sampath & Ors vs Sec.Min.Of Water Resources & Ors on 20 January, 2015 in civil** APPEAL NOS. 712-713 OF 2014 (Arising out of SLP(C) Nos.3106-3107 of 2012)

Even if it is presumed that NWDA is "State" under Article 12 of the Constitution, the appellants have failed to prove that they are at par with their counterparts, with whom they claim parity. As held by this Court in Union Territory, Chandigarh v. Krishan Bhandari, (1996) 11 SCC 348, the claim to equality can be claimed when there is discrimination by the State between two persons who are similarly situated. The said discrimination cannot be invoked in cases where discrimination sought to be shown is between acts of two different authorities functioning as State under Article 12. Thus, the employees of NWDA cannot be said to be 'Central Government Employees' as stated in the O.M. for its applicability.

b. In **S.C. Chandra v. State Of Jharkhand in Civil Appeal No. 1532 Of 2005** (With Civil Appeal No. 6595 Of 2005, 6602-6603 & 6601 Of 2005) In Writ Petition (S) No. 3666 Of 2001 | 21-08-2007

There should be total identity between both groups i.e. the teachers of the school on the one hand and the clerks in BCCL, and as such the teachers cannot be equated with the clerks of the State Government or of the BCCL. The question of application of Article 39(d) of the Constitution has recently been interpreted by this Court in State of Haryana & Ors. V. Charanjit Singh & Ors. [(2006) 9 SCC 321] wherein their Lordships have put the entire controversy to rest and held that the principle, 'equal pay for equal work' must satisfy the test that the incumbents are performing equal and identical work as discharged by employees against whom the equal pay is claimed. Their Lordships have reviewed all the cases bearing on the subject and after a detailed discussion have finally put the controversy to rest that the persons who claimed the parity should satisfy the court that the conditions are identical and equal and same duties are being discharged by them. Though a number of cases were cited for our consideration but no useful purpose will be served as in Charanjit Singh (supra) all these cases have been reviewed by this Court. More so, when we have already held that the appellants are not the employees of BCCL, there is no question seeking any parity of the pay with that of the clerks of BCCL.

IV. Besides, applicant has further contended that he is on par with CGHS/ CHS/ Ayush doctors who have been granted DACP. A closer look at the induction of CGHS/ CHS doctors, would reveal that they are recruited through UPSC through an open competition. The recruitment rules are different and they deal with patient care. In contrast, applicant, though a doctor by profession, has his work domain as research into relevant areas. As a part of the research activities, patients are treated, but not as is being done by CGHS/ CHS doctors, whose core area of work is patient care. In particular, applicant as Director of NIIMH is more into research of literary documentation and therefore, it would be a far cry to compare himself with those of CGHS/ CHS nor with those of the National Institutes cited. The overall basis of the appointment of the applicant is based on CCRAS bye-laws and in terms of its Memorandum of Association. Applicant has rose from the ranks in the respondents organization. Same logic as propounded above distinguishes the applicant profession from that of AYUSH doctors. Therefore, in view of the above background, the judgments delivered by the Hon'ble Principal Bench in OA OA 2563/2010, relied upon by the applicant would not render any assistance to the applicant. Analogously, the judgments of the Hon'ble Principal Bench in regard to doctors of Delhi Municipal Corporation in OA 4066/2016, etc would not come to the rescue of the applicant.

V. Nevertheless, it would not be fair if we do not touch upon the averment that when CCRAS decided to implement 6th CPC recommendations, then it cannot ignore implementing DACP, which is a part of the 6th CPC, as observed by the Hon'ble Principal Bench in OA

2563/2010. Apparently, it appears, the applicant is correct. However, when we go into the details it is seen that the applicant has availed insitu promotions implemented by CCRAS. The scheme, as was presented by the learned counsel for the respondents, is an ongoing scheme. Therefore, there has been no direction from GOI to CCRAS to implement the DACP scheme, nor did the Governing Council thought it fit to examine and decide to introduce it. Even assuming for a moment that respondents have decided to introduce DACP, applicant can avail any one, either insitu or DACP and not both. In the instant case, CCRAS has not introduced DACP and hence it is not no open to the applicant to claim DACP, but be contended with what has been granted as insitu promotions. Therefore, the observations made by the Hon'ble Principal Bench cited and relied upon by the applicant would not come to his rescue.

VI. Other contentions of the applicant about the orders dt. 29.10.2008, 25.04.2011, 05.09.2014, 3.11.2014, we find them not relevant to the applicant for the reason that neither the GOI has issued a directive to CCRAS to implement the DACP nor did the Governing Council step in to introduce it through an appropriate resolution. There are many circulars issued by the nodal Ministries and when it comes to their application to autonomous bodies like CCRAS, it is either left open to them to adopt or a specific direction is given by the nodal Ministry to implement them. In the instant case, either of the condition has not been satisfied. Therefore, the assumed application of OMs cited by the applicant would not arise, as contended by him.

VII. Further, as has been rightly pointed out by the applicant, designation does not matter but the nature of duties do. Therefore, as is clear from the mandate of NIIMH presented in Annexure R-1 filed with the reply of the respondents, the applicant's main work focus is research as a doctor and not patient care. Therefore, he cannot compare himself with others like doctors of CGHS/CHS/ Ayush doctors and of other National Institutes. Hence, the OM dt. 19.09.2019 relied upon by the applicant loses its relevance in furthering his cause.

VIII. Coming to Dr. K.S. Sethi's judgment, it is not applicable to the case of the applicant since the applicant is neither an AYUSH doctor nor is he working in the Ministry of Ayush. Even with regard to Bye-Law 47, when the GOI itself is not intending to grant the benefit by issuing a directive to the CCRAS, then any reliance on the said bye-law will not be of any consequence. Representation of the applicant was submitted on 25.9.2019 and before it could be responded to, applicant filed the OA thereby, making the matter *sub-judice* and restraining the respondents to reply. We have gone through the other contentions too, but did not find them relevant to comment upon. Applicant, we observe, has indulged in excessive pleadings.

IX. To conclude, in view of the above circumstances, viewed from any angle, we do not find any merit in the case and therefore, dismiss it, with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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