

**Central Administrative Tribunal  
Principal Bench**

O.A.No.1961/2004

New Delhi, this the 9<sup>th</sup> day of September 2005

**Hon'ble Shri Justice B. Panigrahi, Chairman**  
**Hon'ble Shri M.P. Singh, Vice Chairman (A)**

1. Dr. P.K. Rathore  
Professor (ENT) Maulana Azad Medical College  
New Delhi-2
2. Dr. Raj Pal  
Professor (Radio Diagnosis) GTB Hospital & UCMS  
New Delhi-95
3. Dr. Ram Chander  
Professor (Skin & VD) GTB Hospital & UCMS  
New Delhi-95
4. Dr. P.K. Mohanta  
Professor (Radiotherapy) Maulana Azad Medical College  
New Delhi-2
5. Dr. Ved Prakash Varshney  
Professor (Physiology) Maulana Azad Medical College  
New Delhi-2
6. Dr. Shantanu Mandal  
Specialist Grade-1 (ENT) Lok Nayak Hospital  
New Delhi-2

..Applicants

(By Advocate: Shri Rakesh Dhingra)

Versus

1. Union of India  
through Secretary to the Govt. of India  
Ministry of Health & Family Welfare  
Department of Health, New Delhi
2. Department of Personnel & Training  
through Secretary to the Govt. of India  
Ministry of Personnel, Public  
Grievances & Pensions, New Delhi

..Respondents

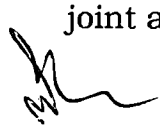
(By Advocate: Shri VSR Krishna)

**O R D E R**

**Shri M.P. Singh**

MA-1681/2004

MA-1681/2004 is allowed subject to just exceptions. Filing of a joint application is permitted.



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OA-1961/2004

By filing the present OA, the applicants have sought the following reliefs:-

- a) Direct the respondent No.1 to make effective date of implementation of DACP as of ACP to have equality and not to hamper the career of Doctors/Medical professionals for delay in issuance of DACP scheme by respondent no.1 and not to implement the DACP scheme from 05.04.2002 as stated in the said impugned order, but with effect from 09.08.1999 to reflect the unbiased and logical true implementation of recommendations of Fifth Pay Commission towards civilian employees other than medical professionals and also towards medical professionals;
- b) Direct the Respondent to implement the order of DACP Scheme at the time of every DPC held after the date of implementation of the DACP scheme;
- c) Direct the Respondent to modify promotion to the applicants under DACP, 2002 from the respective date of attaining eligibility of 2+4 years, as indicated in ACP (09.08.1999) of which DACP is part instead of from a self chosen & arbitrary date 05.04.2002, to applicants as given in the impugned orders;
- d) Direct Respondent to pay arrears accruing from such pre-ponement of promotions as prayed above;
- e) Allow this application with costs; and
- f) Pass such further or other order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

2. Brief facts of the case are that the applicants belong to Teaching and Non-Teaching Specialist Sub-cadre of the Central Health Service. As per the provisions of Central Health Service Rules, 1996 (hereinafter referred to as "Rules of 1996"), a member of the service was eligible for promotion as Associate Professor/Specialist Grade-II (Senior Scale) upon completion of 2 years regular service in the grade of Assistant Professor/Specialist Grade-II (Junior Scale). An Associate Professor/Specialist Grade-II (Senior Scale) was further eligible for promotion to the post of Professor/Specialist Grade-I having put in regular service of 6 years in the grade, i.e., after completion of 8 years of service.

3. The Central Government with a view to ameliorate stagnation in various cadres, on the recommendations of 5<sup>th</sup> Pay Commission,



introduced Assured Career Promotion (ACP) Scheme w.e.f. 9.8.1999 granting two financial upgradations upon completion of 12 and 24 years of service respectively. Similarly, as per the recommendations contained in para 52.15 of the 5<sup>th</sup> CPC, the Govt. of India, Ministry of Health & Family Welfare (Department of Health) introduced Dynamic Assured Career Progression (DACP) Scheme vide its circular dated 5.4.2002. According to the applicants, the effective date of implementation of notification dated 5.4.2002 should have been not later than 9.8.1999, the date of implementation of notification of ACP scheme. The DACP scheme of 2002 provides as under:-

"DACP, 2002

2 years regular service as Assistant Professor/Specialist Grade – II (Junior Scale) for promotion as Associate Professor/Specialist Grade – II (Senior Scale).

4 years regular service as Associate Professor/Specialist Grade-II (Senior Scale) for promotion as Professor/Specialist Grade-I."

4. The applicants had made two representations dated 3.9.2002 and March 2004 requesting the respondents to implement DACP scheme in their grade from 9.8.1999 but the said representations did not evoke any response. Hence the present OA.

5. The respondents in their reply have stated that Office Memorandum dated 5.4.2002 is a policy decision and the provisions of OM are legal and binding on all concerned. According to the respondents, it is a settled law that the Govt. can stipulate a cut-off date. The respondents have also stated that as per Rules of 1996, Assistant Professor with two years regular service is eligible for promotion as Associate Professor without linkage to vacancies and after six years of service as Associate Professor is eligible for promotion as Professor, i.e., after completion of eight years regular service. Consequent upon recommendations of 5<sup>th</sup> CPC, the DACP Scheme for officers of the CHS was introduced by the Govt. of India vide OM dated 5.4.2002. In para 4 of DACP scheme, it is clearly mentioned that it shall take effect prospectively from the date of issue of orders. An Associate Professor will be eligible for promotion as Professor in the pay scale of Rs.14300-18300 after putting in 4 years service in the grade, i.e., after putting in 6 years in service. Prior to implementation of DACP scheme dated 5.4.2002, all promotions from Associate Professor to Professor in the Teaching Sub-cadre and Specialist Grade-II to Specialist-I in the Non-teaching Sub-cadre were

made according to Rules of 1996 and promotions are being made according to this order. No representation dated 3.9.2002 in respect of Dr. P.K. Rathore, Professor of ENT belonging to Teaching Sub-cadre of CHS and presently working at MAMC, New Delhi under Govt. of NCT of Delhi, has been received through proper channel. On the basis of 5<sup>th</sup> CPC regarding DACP for officers of the CHS, orders have been issued on 5.4.2002 and have been implemented accordingly.

6. We have heard both the learned counsel for the parties and perused the material placed on record. During the course of arguments, learned counsel for applicants has submitted that on the recommendations of the 5<sup>th</sup> CPC, the Govt. has introduced ACP scheme for granting two financial upgradations w.e.f. 9.8.1999. Another scheme, namely, DACP scheme, has also been introduced by the Govt. to grant financial upgradation to the doctors in order to remove stagnation. According to him, it is a case of discrimination as the ACP scheme was made effective from 9.8.1999 whereas DACP scheme was introduced from 5.4.2002. He has also submitted that in para 10 of ACP scheme issued on 9.8.1999, it has been stated as under:-

“10. The Fifth Central Pay Commission in paragraph 52.15 of its Report has also separately recommended a “Dynamic Assured Career Progression Mechanism” for different streams of doctors. It has been decided that the said recommendation may be considered separately by the administrative Ministry concerned in consultation with the Department of Personnel and Training and the Department of Expenditure.”

Since the Govt. has decided to consider the recommendations of 5<sup>th</sup> CPC with regard to DACP, there was legitimate expectations of the applicants to have the same benefit, which has been granted to the persons working in the Administration but the Govt. instead of giving the benefit from 9.8.1999, has taken a long time and has introduced the scheme, called DACP scheme from 5.4.2002 only.

7. In support of his arguments, learned counsel has also taken the ground of ‘promissory estoppel’ and has relied upon the judgments of the Hon’ble Supreme Court in **Sharma Transport v. Govt. of A.P. & other**, (2002) 2 SCC 188 and **Biman Krishna Bose v. United India Insurance Company Limited**, 2001 (6) SCC 477. In **Sharma Transport’s case** (supra), it has been held by the Apex

Court that the discretionary powers should not be exercised arbitrarily. The respondents have exercised the powers arbitrary to the detriment of applicants by notifying the DACP scheme on 5.4.2002, whereas the ACP scheme was notified on 9.8.1999 effecting the date of implementation to the date of notification. In fact the date of implementation should have been from the same date even though the date of notification may be different. The delay in notification was on the part of the respondents. In the latter case, it has been decided by the Apex Court that even in an area of contractual relations, the State and its instrumentalities are enjoined with obligations to act with fairness. M

8. On the other hand, learned counsel appearing for the respondents has submitted that ACP scheme is not applicable to Group 'A' officers. It is applicable only to Groups 'B', 'C' & 'D' employees. The applicants, who are working as Doctors in the Ministry of Health, are Group 'A' officers and they were already getting a time bound promotion as per the report of Tikku Commission. When the ACP scheme was introduced by the Govt. on 9.8.1999, it was stated in para 10 of the aforesaid OM that 5<sup>th</sup> CPC in its report has also separately recommended a "Dynamic Assured Career Progression Mechanism" for different streams of doctors. At that time, it was decided that the said recommendations may be considered separately by the administrative Ministry concerned in consultation with the Department of Personnel and Training and the Department of Expenditure. In the present case, the Ministry of Health and Family Welfare was the concerned Ministry, which has considered the recommendations of the 5<sup>th</sup> CPC and has taken a final decision by issuing a DACP scheme dated 5.4.2002. It was only in 1999 the Govt. took a decision to consider the recommendations of the Commission with regard to DACP. This scheme has been made effective from 5.4.2002 onwards. In the case of ACP also, the scheme was effective prospectively and not retrospectively. He also submitted that the doctors, who were getting the benefit under Tikko Commission under time bound promotion, have been given promotions from a date earlier than 5.4.2002. He has also contended that the contention of the applicants that the DACP scheme became effective even after 5.4.2002 as the DPC for granting benefit under DACP scheme held in June 2002 is wrong and misconceived. Learned counsel for applicants is making a general and vague submission. He could respond to the allegations of the applicants if he points out a

specific case in which the recommendations of the DACP have not been implemented w.e.f. 5.4.2002 or from the date an officer became eligible as per the conditions laid down in the scheme. 20

9. He has also submitted that the Hon'ble Apex Court has already held in a number of decisions that the Govt. has the power to fix a cut-off date. To support his arguments, he has relied upon the judgment of **Union of India & another v. M/s. Parameswaran Match Works & others**, (1975) 1 SCC 305 wherein it has been held as under:-

"A classification can be founded on a particular date and yet be reasonable. The choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the Legislature or its delegate must be accepted unless we can say that it is very wide of the reasonable mark."

10. We have given careful considerations to the rival contentions of both the parties and find that the question of consideration before us is whether the scheme of DACP could be introduced from the date the ACP scheme was introduced, i.e. from 9.8.1999. We find that as per para 10 of the said scheme, which was introduced from 9.8.1999, a decision was taken by the Govt. to consider the recommendations of the 5<sup>th</sup> CPC with regard to DACP scheme. The recommendations were considered and examined by the Ministry of Health, which was the administrative Ministry concerned. The Ministry took a decision on 5.4.2002 and made the DACP scheme effective from a prospective date. We also find that the law laid down by the Hon'ble Supreme Court is that the Govt. has the power to fix a cut-off date with regard to scheme to be introduced by them. The only condition is that the cut-off date fixed by them should be supported by the reasons and should not be whimsical and capricious. We find that the Govt. has fixed this date and has also spelt out the reasons for fixing the date of 5.4.2002. It was only after the scheme of 9.8.1999 was introduced, that a decision was taken to consider and process the recommendations of CPC for granting DACP. Accordingly, the recommendations of CPC were considered and a decision was taken by the Ministry of Health in consultation with DoP&T and Department of Expenditure. The decision was taken on 5.4.2002 and

the scheme was made effective from that date. We also find that the contentions of the applicants that the benefit of the scheme has not been given from 5.4.2002 as the DPC has been held and the orders have been issued from much later date is not correct and is rejected. Learned counsel has failed to indicate any instance where the recommendations of the DACP have not been implemented w.e.f. 5.4.2002 or from the date an officer became eligible as per the conditions laid down in the scheme. Therefore, the contention of the applicants is without any merit. v

11. For the reasons recorded above, we are of the considered view that the applicants have no case. Accordingly, the OA being bereft of any merit fails and is dismissed without any order as to costs.

  
( **M.P. Singh** )  
**Vice Chairman (A)**

  
( **B. Panigrahi** )  
**Chairman**

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