

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

Original Application No.134/2021

Dated this the 17th June, 2021.

CORAM :

Hon'ble Shri Jayesh V. Bhairavia, Member (J)

Hon'ble ShriDr. A.K. Dubey, Member (A)

Ganesh Chandra Sahu,
Son of Ramesh Chandra Sahu,
Aged 59 years,
Working as Research Officer (Medical)
Residing at :E-202, Shyamsukan Residency,
PDCU Cross Roads,
Bhaijipura Patiya, Raisan,
Gandhinagar – 382 007.

...Applicant

(By Advocate: Shri Joy Mathew)

Versus

1. Union of India,
Notice to be served through the Secretary,
Ministry of Health & Family Welfare,
Department of Health,
Government of India,
Nirman Bhavan,
New Delhi – 110 011.
2. The Director General of Central Health Services,
Ministry of Health & Family Welfare,
Nirman Bhavan,
New Delhi – 110 011.
3. The Director,
National Vector Borne Disease
Control Programme,
22,-Shamnath Marg,
New Delhi – 110 054.
4. The Senior Regional Director,
Regional Officer for Health and Family Welfare,
Government of India,
1st Floor, Neptune Tower, Opp. Nehru Bridge,
Ashram Road,
Ahmedabad – 380 009.

...Respondents

(By Advocate : Shri H.D.Shukla)

ORDER (ORAL)

Per Dr. A. K. Dubey, Member (A)

1. Aggrieved by the order of the respondents dated 08.03.2021 intimating that the representation of the applicant could not be processed as the matter was *sub judice* (Annex.A/1). The applicant has preferred this OA seeking following reliefs:

- “A) Quashing and setting the Order No.1-11/2021 (Admn.I) dated 8.3.2021 issued by the respondent No.3 herein at Annexure-A1.*
- B) Directing the respondents to extend the benefit of the Presidential Order No.A-12034/1/2014-CHS-V dated 31.05.2016 at Annexure-A2.*
- C) Directing the respondent No.3 to take a decision in view of order F.No.Z.16024/11/2016-CHS-V dated 30.08.2016 at Annexure-A/3;*
- D) Restraining the respondents from retiring the applicant from service with effect from 31.5.2021 and allowing the applicant to continue to be in service till he completes the age of 65 on 31.05.2026; and*
- E) Passing any other appropriate order.”*

2. The case of the applicant is briefly mentioned as under:-

2.1 Vide appointment order dated 29.03.2004, the applicant was appointed as Research Officer (Medical) on regular basis at the Regional Office for Health & Family Welfare (ROH&FM), Ahmedabad w.e.f. 29.09.2005 on the stipulated salary plus NPA (Annex.R/3), Vide respondents' order dated 31.05.2016 (Annex.A/2,) the age on superannuation of the specialists of Non-Teaching and Public Health Sub-Cadres of Central Health Service (CHS) and General Duty Medical Officers (GDMO) of CHS was enhanced to 65 years. Subsequently, vide order dated 30.08.2016 (Annex.A/3), the respondents had clarified that the order dated 31.05.2016 was applicable to the doctors of CHS only. It also clarified that the Departments/Ministries/State Governments / Autonomous Institutions were allowed to take decision with the approval of their respective competent authorities, regarding the applicability of the Ministry's

decision enhancing the age of superannuation of doctors to 65 years as per their requirement and circumstances. The applicant contends that he was appointed by the President of India and therefore, he is entitled to the benefits of the respondents order dated 31.05.2016 and accordingly, his date of superannuation should be 31.05.2026.

- 2.2 The applicant made a representation dated 07.07.2020 addressed to the respondent No.2 viz., The Director General of Central Health Services, (DGHS) requesting to extend the benefit of the order dated 31.05.2016 to him. In response, the respondent's communication in the impugned order dated 08.03.2021 (Annex.A/1) conveyed that in view of the OA No.390/2011 before the Bangalore Bench of this Tribunal and OA No.291/2017 before the Jaipur Bench of this Tribunal, the matter was *sub judice* and hence it could not be processed. The applicant argues that if this order was not impugned, he would have to superannuate on 31.05.2021, rendering his request for enhancement of the superannuation age on the basis of respondents order dated 31.05.16 infructuous.
- 2.3 The respondents filed their reply contending that OA No.390/2011 before the Bangalore Bench of this Tribunal related to Dr.C.Nagaraj Ex. Research Officer, ROH&FW, Bangalore for seeking extension in superannuation from the age of 60 to 62 with reference to the respondents order dated 16.11.2006. In addition Dr. T.D. Khatri, Ex. Research Officer Medical, ROH&FW Jaipur, filed OA No.363/2017 before the Jaipur Bench of this Tribunal seeking extension of the age of superannuation from 60 to 65 with reference to the order dated 31.05.2016. The impugned order shows that in view of these two OAs, matter was considered as *sub judice* and therefore the applicant's request could not be processed. The respondents submitted that the applicants of both these OAs had since superannuated.
3. When the matter came up before this Tribunal on 05.05.2021 the applicant submitted that if the interim relief was not granted, he would be made to retire on 31.05.2016, rendering his prayers in OA infructuous. For this purpose, the applicant placed reliance on the order passed by the Principal Bench of this Tribunal in the case of Dr.Santosh Kumar Sharma vs. M/o.

Health & Family Welfare in OA No.2712/2016 in which the Principal Bench had held as under:-

“31. In view of the legal and factual analysis, these OAs are allowed with the following directions:

(1) The action of the respondents and the Government order dated 31.05.2016 as also the amendment in FR-56(bb) to the extent the enhancement of age of superannuation is confined to the Doctors under the Central Health Service are declared ultra vires to the Constitution and violative of Article 14.

(2) The applicants in the present OAs are entitled to similar treatment in regard to service conditions including the age of retirement as is available to Doctors working under the Central Health Service. The orders passed by the respondents retiring the applicants at the age of 60 years are hereby declared as null and void.

3) The applicants will be entitled to the benefit of enhancement of age of superannuation in terms of the Government of India order dated 31.05.2016 read with the amended FR-56.

(4) A further direction in the nature of mandamus is issued to allow the applicants to continue in service till they complete the age of 65 years. If any of the applicants has been retired at the age 56 OA No.2712/2016 of 60 years, he/she shall be re-inducted into service till he/she completes the age of 65 years, and paid salary for the period he/she was out of service on account of retirement at the age of 60 years.”

4. The learned counsel for the applicant also submitted that the above quoted order of the Principal Bench was challenged by the respondents before the Delhi High Court through WP(C) No.8704/2017 with CrI.A No.35693/2017. High Court of Delhi by its order dated 15.11.2011 dismissed the writ petition. In this backdrop, the applicant submits that the very issue having been settled, he was entitled to continue to work on the extended duration in terms of the order dated 31.05.2016. The applicant clarifies yet again that the Research Officer (Medical) worked under the Directorate General of Central Health Services, Ministry of Health & Family Welfare, New Delhi. The counsel for the applicant also argued that the Research Officer (Medical) was getting salary plus NPA (Non-Practicing Allowance) which was applicable only to doctors. The applicant was a duly appointed medical doctor, appointed initially on a project but later had his services regularised with retrospective effect. There was no valid reason why his order dated 31.05.2016 was not applicable to him, the applicant's counsel argued. Per contra, the counsel for the respondents submits that the order of the Principal Bench which was relied upon by the applicant. was actually with regard to the extension of the benefits of the order dated 31.05.2016 to another set of doctors as this order was earlier applicable to one set of doctors (Allopathic).

He argues that this particular application stood on different ground and therefore reliance on Principal Bench's Order was not tenable.

5. In view of these arguments and also keeping in mind that if the representation was not finalised or included within 31.05.2021, OA itself would become infructuous, this Tribunal granted interim relief and ordered to list the matter for final hearing on 09.06.2021. The applicant was given the liberty to file rejoinder to the corresponding respondents who were in turn allowed to file sur rejoinder, if they so wished, before the next date of hearing.
6. Respondents however, approached the Hon'ble Gujarat High Court vide SCA No.7737/2021 converted from SCA/12058/2021 dated 01.06.2021 against the interim relief given by this Tribunal. The Hon'ble High Court vide its order dated 09.06.2021 quashed the interim relief given by this Tribunal and passed the following order:-

"3. Having heard learned advocates Mr.Devang Vyas and Mr.Ronith Joy for the respective parties and without examining the merits of the case, we are of the opinion that prima facie, by way of interim order it seems that original application itself is allowed. Hence, the said order is required to be quashed and set aside.

4. Hence, the petition is allowed. The impugned order dated 05.05.2021 passed by Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad in O.A.No.120/134/2021 is quashed and set aside. The Tribunal is requested to decide the original application at the earliest, after giving opportunity of hearing to all concerned, preferably before 30.06.2021. The Tribunal shall decide the case without being influenced by the observations made in the order impugned as well as the observations made by this Court in the present order. Rule is made absolute accordingly."

7. As directed by Hon'ble High Court, this Tribunal heard the counsel today in course of the final hearing on OA without being influenced by the observations made by Hon'ble High Court as also the observations in this Tribunal's order. Hon'ble High Court had clarified in its order that it did not express any opinion on the merit of this case.
8. Heard the learned counsel for the applicant Mr.Joy Mathew and learned standing Counsel Mr.H.D.Shukla. The incontrovertible facts emerging from the arguments and contentions in the foregoing paragraphs are briefly indicated below:-
 - 8.1 The applicant is a medical doctor, employed as Research Officer (Medical) on the stipulated pay scale plus Non Practicing Allowance (NPA). A copy of the appointment letter dated 12.7.1990 (Annex.R1) clearly shows that the appointment of the applicant was originally

made to the P.F. Monitoring Scheme which was time bound and extra temporary in nature, under the administrative control of Regional Director, Regional Office for Health & Family Welfare, at Ahmedabad. Later, vide order dated 29.09.1995, Government gave approval for creation of 156 posts by merging the Malaria Operational Field Research Scheme (MOFRS) with the National Malaria Eradication Programme (NMEP). Further, vide order dated 29.03.2004, seven persons services were regularised with effect from 29.09.1995 in view of the compliance of judgment dated 11.09.2003 of this Tribunal's Bangalore Bench's Order in OA 600/2003 filed by Dr. C.Nagaraj & Ors. (Annex.R/3). Entry No.7 in this order contains the name of the applicant.

- 8.2 The counsel for the applicant further submitted that vide order dated 31.05.2016 (Annex.A/2) the date on superannuation with respect to the specialists of Non Teaching and Public Health sub-cadres of Central Health Services (CHS) and General Duty Medical Officers of CHS was enhanced to 65 years. Later, by order dated 30.08.2016, it was clarified that the order dated 31.05.2016 was applicable only to the doctors of CHS and it authorised other Departments / Ministries / State Governments/ Autonomous institutions to take the decision with the approval of the respective competent authorities (Annex.A/3). On the strength of these orders, the applicant represented that he should also be allowed to serve till 65 years. But the respondents had intimated him vide impugned order that because of the matter was *sub judice*, his request was not processed.
- 8.3 Applicant's counsel argued that it was not correct to contend that the matter was *sub judice*. Bangalore Bench of this Tribunal had made in its order in 2012 and therefore, to quote this order as a ground for not processing the applicant's request was legally not sustainable. The matter before the Jaipur Bench of this Tribunal was on the same footing but in this case, the person had retired. However, in the present case, the applicant was in service on the eve of giving his representation, and moved for interim order after the impugned reply.
- 8.4 The learned counsel for the applicant argued that it would be appropriate to refer to the Central Health Service Rules, 2014, notified

vide GSR 27E dated 07.04.2014 by the Ministry of Health and Family Welfare.

The sub rule (k) of Rule 2 of these Rules reads:

“service” means the Central Health Service. vide this notification itself.

Further, sub rule (l) of Rule 2 defines the sub cadre as follows:-

“Sub Cadre” means any of the 4 streams of Service namely, General Duty, Public Health, Teaching Specialists and Non Teaching specialists, as the case may be.”

The counsel for the applicant submits that in this case, the applicant belonged to the Public Health Stream of the sub cadre. He argued that in terms of the provisions contained in Rule 5, following constitutes the members of the services.

- (a) Person appointed under Sub rule (5) of rule 4:-
- (b) Persons appointed to duty posts under rule 6; and
- (c) Persons appointed to duty posts under rule 7.

Sub rule 5 of rule 4 reads as under:

“Government may in consultation with the Commission, appoint an officer, whose post is included in the Service under sub rule (4) to the appropriate grade of Service in a temporary capacity or in a substantive capacity, as may be deemed fit, and fix his seniority in the grade after taking into account the continuous regular service in the analogue grade.”

Sub rule (4) of rule 4 reads as under:-

“The Government may, in consultation with the Commission, include in the Service any post other than those included in Schedule-II or exclude from the Service a post included in the said Schedule.”

Relevant sub rules of Rule 5 & 6 are quoted below:-

Rule 5(1)(b):

Persons appointed to duty posts under rule 6; and

Rule 5(2): a person appointed under clause (b) of sub-rule (1) shall, on such appointment, be deemed to be the member of the Service in the appropriate grade applicable to him as specified in Schedule –II.”

Rule 5(3):A person appointed under clause (c) of sub-rule (1) shall be, the Member of the Service in the appropriate grade applicable to him Schedule-II from the date of such appointment.

Rule 6:Future Maintenance of Service- read as under:-

“The vacancies in any of the grades referred to in Schedule-II shall be filled in the manner as hereinafter provided under these rules.

(2):The method of recruitment, the field of selection for promotion, including the minimum qualifying service in the immediate lower

grade or lower grade as the case may be, for appointment or promotion to the posts in the respective Sub-Cadres and specialities within the Sub-Cadre concerned, included in the Service shall be as specified in Schedule III.”

9. Counsel for the applicant argued that the applicant is a medical doctor whose appointment has since been regularised. Hence his appointment initially being temporary or on a project was not relevant any longer. He stated that a harmonious reading of the provisions quoted above makes it clear that the applicant is a doctor of Central Health Service. It is true that Schedule 1 to this rule gives a list of posts and pay scale of certain posts of CHS and it does not specifically or explicitly mention about the post of Research Officer (Medical). Stipulation at the Entry II below the Table of posts and scales in Schedule I stipulates that CHS officers shall be entitled to NPA at such rates as may be decided by the Government from time to time. And the applicant's regularisation letter clearly mentions his entitlement to NPS. By virtue of this particular stipulation in Schedule I, only CHS officers are entitled to NPA.
10. The nature of duty and recruitment process of the medical officer has mentioned in Schedule III. This mentions that the exact method of the recruitment shall be decided by the Controlling Authority.
11. The main argument of the applicant is that his appointment was made by the Director General of Health Services and Research Office of Health & Family Welfare also comes under the Director General of Health Service and therefore by implication, read with note II below the table of posts in Schedule I, the applicant is also a part of CHS.
12. Learned Standing Counsel for the respondents argued that even though the services of the applicant along with others' were regularized vide order dated 29.03.2004, his very appointment was not to the cadre but on a project and continued to be under the Regional Director of Health & Family Welfare. Therefore the applicant was working with ROH&FW and not on the strength of CHS cadre. Actually, the applicant did not belong to any of the sub cadre of CHS, he submitted. He also stated that a total of 156 employees including 10 research officers (medical) were there and now all others had retired, except the applicant. Now as on date, the applicant too had retired. His post is not in the CHS hierarchy because Schedule I does not have any such provision. He also argued that the matter decided by the Principal Bench of this Tribunal was in a different context; it was a matter of

extension of benefits already admitted to the Allopathic doctors to other doctors under AYUSH and hence that order may not be considered relevant in this matter. As appointment to the post of Research Officer (Medical) was there because he was a medical doctor, he was not borne on the cadre of Central Health Services per se. Composition of cadres or sub cadres was as stipulated in rules and was not based on conjecture or inferencing. It is true that Principal Bench's order was challenged before the High Court but that stood up since Hon'ble High Court did not over turn that.

13. Heard the counsel and perused the material brought before us. In compliance of the directions of Hon'ble High Court of Gujarat, we have heard it afresh notwithstanding the arguments at the time of grant of interim relief by us which has since been quashed by Hon'ble High Court. We are also mindful that the Hon'ble High Court had not expressed any opinion on the merit of this case. After perusing all the papers and keeping in view the factual matrix that follows from the discussions and submissions in the foregoing paragraphs, we find two things clearly established. First, the applicant's appointment is not in dispute, particularly after his service has been regularised. Second, we find that that simultaneous reading of Rule 4, 5 and 6 gives an impression that it is within the authority of the respondents to include or exclude a particular position in Schedule II. Thus by following the prescribed procedure, the post mentioned in Schedule III may be included in II.
14. We have also gone through the note II below the table in schedule I to the Rules whereby NPA is admissible to the CHS officers. Apart from the permissibility of bringing schedule III posts to schedule II posts, the note II below the table in schedule I, would imply that the post of R.O. (Medical) is borne on CHS.
15. It is a matter of administrative decisions either to specifically or explicitly mention the post of R.O. (Medical) in the Schedule II, or to leave it implied. But we would not like to intervene in this matter of administrative expression.
16. We also find that the ground for not processing the matter mentioned in the impugned order dated 08.03.2021 is extraneous to this case because the OA No.390/2021 of Bangalore Bench of this Tribunal mentioned in the impugned order is not pending any more; that matter has since been adjudicated and has attained finality. Hence, to treat such an order as a

ground for treating the matter *subjudice* is erroneous on the part of the respondents. However, the OA No.291/2017 before the Jaipur Bench of this Tribunal which has been mentioned in the impugned order is said to be pending and to that extent contention of the respondents treating the matter as *sub judice* seems tenable. In view of the fact that there is clear cut stipulation that NPA is admissible to CHS officers, and the applicant gets NPA, there seems to be no justification to not treating Research Officer (Medical) as part of CHS. We therefore, direct the respondents to examine his representation and additional pleadings, contentions before us as grounds, in the light of rules discussed above particularly Rule 2(k), 2(l), 4, 5, 6 and Note II below the table in Schedule I of the CHS Rules, 2014 and take an informed decision and communicate the same through a speaking order to the applicant. Such an order shall have to be the subject to the outcome of the OA pending before the Jaipur Bench of this tribunal. The OA is disposed off accordingly. The respondents shall take decision within two months from the date of receipt of a copy of this Order. That decision will also stipulate how the period from 01.06.2021 till the date of the order is to be dealt with, as per the administrative instructions and rules.

(A.K.Dubey)
Administrative Member

(Jayesh V. Bhairavia)
Judicial Member