

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00051/2020

Friday, this the 8th day of October, 2021

CORAM:

Hon'ble Mr. P. Madhavan, Judicial Member
Hon'ble Mr. K.V. Eapen, Administrative Member

Dr. G.K. Swamy, aged 59 years, S/o. Late Banaiah,
 Director, National Ayurveda Research Institute for Panchakarma,
 Central Council for research in Ayurvedic Science, Ministry of
 Ayurveda, Yoga, Naturopathy, Unnani, Siddha & Homeopahty
 (AYUSH), Government of India, Cheruthuruthy, Trissur,
 Kerala – 679 531. **Applicant**

(By Advocate : Mr. Varghese John)

V e r s u s

1. National Ayurveda Research Institute for Panchakarma,
 Central Council for research in Ayurvedic Science,
 Ministry of Ayurveda, Yoga & Naturopathy, Unnani, Siddha
 Homeopahty (AYUSH), AYUSH Bhawan, B-Block,
 GPO Complex, New Delhi – 110 023.
2. The Director General, Central Council for Research in
 Ayurvedic Science, Ministry of AYUSH, 61-55,
 Institutional Area, Opp. D' Block, Janakapuri,
 New Delhi – 110 058.
3. Director, National Ayurveda Research Institute for Panchakarma,
 Central Council for Research in Ayurvedic Science,
 Government of India, Cheruthuruthy, Trissur,
 Kerala – 679 531. **Respondents**

(By Advocate : Mr. N. Anilkumar, SCGSC)

This application having been heard on 27.09.2021 through video conferencing, the Tribunal on 08.10.2021 delivered the following:

O R D E R

Hon'ble Mr. P. Madhavan, Judicial Member –

This is an Original Application filed seeking the following reliefs:

“i) Call for the records leading to issuance of Annexure A1 and Annexure A2 and set aside the same as illegal, arbitrary, unreasonable and discriminatory.

ii) Declare that the applicant is entitled to continue in service till the date he attains the age of 65 years with all consequential benefits.

iii) Direct the respondents to allow the applicant to continue in service till the date he attains the age of 65 years with all consequential benefits as if Annexure A1 and A2 orders are not issued.

iv) Award costs of and incidental to this application.

v) Grant such other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.”

2. The applicant is working as an Ayush Doctor in Central Council for Research in Ayurveda Science (CCRAS). He is due to retire on 31.1.2020 on attaining the age of 60 years. As per Rule 56 of Fundamental Rules the age of superannuation of Ayush Doctors were enhanced to 65 years by Ministry of Ayush but the Ministry had clarified that amendment is not applicable to the employees of CCRAS. But as per Rules 34 and 35 of the by laws of the Central Council provides that the rules governing the retirement of the employees of the Government of India as amended from time to time will apply to the employees of the CCRAS. It is also made clear in the bylaw that the Fundamental Rules of the Government of India as amended from time to time will apply *mutatis-mutandis* to the employees of the CCRAS. So the applicant made a representation dated 22.3.2018 for continuing in service as Ayush Doctor up to the age of 65 years. But the respondents have impliedly rejected the same and applicant was issued with a letter directing him to retire on 31.1.2019. The above order of the respondents is arbitrary and discriminatory and the applicant is entitled to continue in service up to the age of 65 years.

3. When the matter came up for admission the applicant sought an interim relief to provisionally allow the applicant to continue in service after 31.1.2019. This Tribunal on 27.1.2020 directed the respondents not to relieve the applicant from his duties and he was permitted to continue. Subsequently, an MA No. 180/417/2020 was filed by the respondents to modify the interim order and the matter was heard in detail and it came out that the order of the Hon'ble Delhi High Court in WP© No. 9554 of 2018 was set aside by the Hon'ble Supreme Court and the case was remanded back to the High Court of Delhi and it was also informed that the interim orders passed by other Benches were also vacated. In view of the above facts, this Tribunal also vacated the interim order granted in this case.

4. Thereafter, the respondents have filed their reply statement and after completion of the pleadings the matter came up for hearing on 28.7.2021. When the matter came up before the Tribunal, the counsel for the applicant submitted that similar matter has come up before the Hon'ble High Court of Cuttack in WP© No. 30620/2020 and the Hon'ble High Court has granted the relief to similarly placed person. It was also submitted that the order of the Hon'ble High Court of Cuttack was taken up in appeal before the Hon'ble Supreme Court in SLP No. 4110/2021 and the SLP is pending for final orders before the apex court. The applicant further submitted that he will be satisfied if a direction is issued to the respondents to consider his case if the SLP pending before the apex court goes in favour of the applicant herein. No objection was raised by the respondents in this regard.

5. The respondents in this case had produced a copy of the order of the Hon'ble High Court of Cuttack in WP© No. 30620 of 2020 dated 17.12.2020 as Annexure MA-3. On going through Annexure MA-3 judgment it seems that the said Writ Petition was filed by an Ayush Doctor employed in CCRAS under the Ministry of Ayush. After hearing both sides the Hon'ble High Court of Cuttack has allowed the Writ Petition. The respondents in the said Writ Petition has filed SLP No. 4110/2021 before the Hon'ble Supreme Court which is produced as Annexure MA-4. It appears that the order of the Hon'ble High Court of Cuttack was stayed by the Hon'ble Supreme Court and the matter is pending before the apex court for final disposal. Further it appears that the law will be settled only when the above appeal is disposed of by the Hon'ble Supreme Court.

6. In view of the pendency of the appeal before the Hon'ble Supreme Court there is no purpose in continuing with the OA before this Tribunal. **Hence, we direct the respondents to consider the case of the applicant if the SLP No. 4110/2021 referred to above goes in favour of the applicant therein and pass suitable orders if the applicant in this OA is similarly placed.**

7. The Original Application is disposed of as above. No order as to costs.

(K.V. EAPEN)
ADMINISTRATIVE MEMBER

“SA”

(P. MADHAVAN)
JUDICIAL MEMBER

Original Application No. 180/00051/2020**APPLICANT'S ANNEXURES**

Annexure A1 – True copy of the office order NO. 994/2019-20 dated 27.12.2019 along with its true English translation.

Annexure A2 – True copy of the letter dated 31.10.2017 along with its covering letter F.3-8/2017/CCRAS/vig/3094.

Annexure A3 – True copy of notification dated 5.1.2018 issued by the Ministry of Personnel, Public Grievances and Pension.

Annexure A4 – True copy of the interim order dated 24.1.2018 of the Principal Bench of this Hon'ble Tribunal in OA No. 335/2018.

Annexure A5 – True copy of the interim order dated 12.9.2018 passed by the Hon'ble High Court of Delhi in WPC 9554/2018.

Annexure A6 – True copy of the order dated 29.10.2019 of the Hyderabad Bench of this Hon'ble Tribunal in OA/926/2019 filed by Dr. Ala Narayana.

Annexure A7 – True copy of the order dated 30.10.2019 passed by the Principal Bench of this Hon'ble Tribunal in OA/3142/2019 filed by Dr. B.C. Lakhera.

Annexure A8 – True copy of the interim order dated 15.5.2018 in OA/180/408/2018.

Annexure A9 – True copy of the interim order dated 23.1.2020 passed by the Hon'ble High Court of Delhi in WP© 9554 of 2018.

Annexure A10 – True copy of judgment of the Hon'ble Supreme Court dated 1.6.2020 in Civil Appeal 2476-2478 of 2020.

RESPONDENTS' ANNEXURES

Annexure R1 – True copy of the Rule 56 of the Fundamental Rules which has been amended through notification dated 5.1.2018.

Annexure R2 – True copy of the same letter from Ministry of Ayush dated 31.10.2017.

Annexure R3 – Copy of order in OA No. 61/797/2018 filed by Dr. Krishna Kumari.

Annexure R4 – Copy of order in OA No. 1121/2018 filed by Dr. G.C. Nanda.

Annexure R5 – Copy of abstract of FR 56(a) & 56(d).

Annexure MA1 –Extracts from clause 34 of Bylaw of CCRAS.

Annexure MA2 –True copy of judgment dated 31.10.2019 in WP© 4115/2014.

Annexure MA3 –True copy of the judgment dated 25.1.2001.

Annexure MA4 –True copy of the letter dated 31.10.2017 issued by Ministry of Ayush.

Annexure MA5 – True copy of order in No. 2072/2018 filed by Dr. Subhash Singh v. Union of India & Ors. Dated 11.9.2018.

Annexure MA6 – True copy of judgment in OA 61/797/2018 filed by Dr. Krishnakumari.

Annexure MA7 –True copy of judgment in OA 1121/2018 filed by Mr. G.C. Nanda.

Annexure MA8 – True copy of the order dated 31.1.2020.

Annexure MA-1 – True copy of the order dated 12.9.2018 in WP No. 9554/2018.

Annexure MA-2 –True copy of the order dated 1.6.2020 in SLP© NOs. 7137-7139/2020.

Annexure MA-3 –True copy of the order dated 17.12.2020 in WP© No. 30620/2020.

Annexure MA-4 –True copy of the order dated 5.4.2021 in SLP No. 4110/2020.