

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 291/345/2018

Order reserved on 19.07.2021

DATE OF ORDER: 27.07.2021

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

1. Dr. Anadi Mathur S/o Dr. Anand Mohan Mathur aged about 57 years resident of B-77, Rajendra Marg, Bapu Nagar, Jaipur.
2. Dr. Mini Mathur W/o Shri Anadi Mathur aged about 49 years resident of B-77, Rajendra Marg, Bapu Nagar, Jaipur.
3. Dr. Satyendra Singh S/o Shri Ummed Singh aged about 65 years resident of B-79, Raman Marg, Tilak Nagar, Jaipur.
4. Dr. Arun Prakash Roy S/o Late Shri Chandra Prakash Roy aged about 67 years resident of 31, Kanti Nagar, Opposite Polo Victory Cinema, Jaipur.
5. Dr. Rekha Johari W/o Shri Arun Prakash Roy, aged about 67 years resident of 31, Kanti Nagar, Opposite Polo Victory Cinema, Jaipur.
6. Dr. Archana Sharma W/o Shri Raj Kishore Sharma aged about 62 years resident of 246, Avenue-III, Goms Defence Colony, Vaishali Nagar, Jaipur.
7. Dr. Shyam Naraian Sharma S/o Shri Satya Naraian Sharma aged about 56 years resident of 1513, Bagru Walon Ka Rasta, Chandpole Bazar, Jaipur.
8. Dr. Monika Dubey W/o Dr. Anil Dubey aged about 50 years resident of 69, Vidyut Abhiyanta Colony, Block-C, Malviya Nagar, Jaipur.
9. Dr. Vandana Garg W/o Dr. Vinod Garg aged about 49 years, resident of 48, Buktanand Nagar, Gopalpura Bye Pass, Jaipur.

10. Dr. Soma Mathur W/o Jai Deep Mathur aged about 53 years resident of S/20, Shyam Nagar, Jaipur.

(Few of the applicants are presently working as CMO/Sp. Grade-II at ESIC Model Hospital, Jaipur and few of the applicants are retired as CMO/Sp. Grade-II).

....Applicants

Shri Tanveer Ahmed, counsel for applicants (through Video Conferencing).

VERSUS

1. Union of India through the Secretary, Ministry of Labour & Employment, Sharam Shakti Bhawan, Rafi Marg, New Delhi-110001.
2. Employees State Insurance Corporation through its Director General, Medical Division-IV, H.Q. Office Panchdeep Bhawan, C.I.G. Marg, New Delhi-110002.
3. The Medical Commissioner, Employees State Insurance Corporation, Medical, H.Q. Office Panchdeep Bhawan, C.I.G. Marg, New Delhi-110002.
4. The Medical Superintendent, ESIC Model Hospital, Laxmi Nagar, Ajmer Road, Jaipur (Raj.)-302006.

....Respondents

Shri T.P. Sharma, counsel for respondents (through Video Conferencing).

ORDER

Per: Hina P. Shah, Judicial Member

The present Original Application has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

"I. The impugned office letters dated 15.03.2018 (Annex. A/1) and 22.06.2018 (Annex. A/1-A) may kindly be declared arbitrary and illegal and while quashing and setting aside the impugned communications, the respondents may kindly be directed to grant DACP benefits to the humble applicants in the interest of justice.

II. The respondents may kindly be directed to consider the distinction between the DACP and the promotion and accordingly the applicants may kindly be held entitled for DACP benefits based on the length of service rendered by them in accordance with O.M. dated 29.10.2008 and 21.07.2009 from the date of initial implementation of scheme i.e. 29.10.2008 and so also maintaining the institutional seniority, in the interest of justice.

III. The Hon'ble Tribunal may be pleased to issue an order or direction which may be deemed fit and proper under the facts and circumstances of the case.

IV. Cost of the Original Application may also be awarded in favour of the applicants."

2. The case of the first applicant is that he is presently working as Chief Medical Officer in ESIC Model Hospital, Jaipur and most of the other applicants are also working in the said Hospital and they were absorbed to ESIC service and released by State Govt. on 30.10.2009. While working in ESIC on deputation, the terms of absorption were circulated vide letter dated 03.06.2005. The applicants submitted their option for institutional seniority on

23.01.2007 and subsequently a letter dated 11/12.07.2011 was issued for consideration of cases of such absorbees under the Dynamic Assured Career Progression (DACP) Scheme for which their APARs were to be obtained from the State Government. Since ACP was to be granted by ESIC under the DACP Scheme which was introduced on 29.10.2008, again an undertaking was sought from the applicants that they are ready to surrender all benefits of promotion/financial upgradation under the State ACP granted by State Govt. from 01.01.2006 to 30.10.2009 on absorption under ESIC w.e.f. 01.01.2006. Accordingly, undertakings were submitted as desired vide ESIC letter dated 11.12/07.2011 with a request for promotion and DACP Scheme on implementation of the Scheme so as to provide benefits of the DACP Scheme as per OMs dated 29.10.2008 and 21.07.2009. The respondents vide letter dated 11.12.2015 replied that the employees were absorbed in ESIC Hospital w.e.f. 01.01.2006 as per the terms of absorption, option was provided to opt institutional or All India seniority and they were entitled for promotion in Grade Pay of Rs. 7600/- and promotion on higher post was only on the basis of All India

seniority which was not acceptable to the applicants as they had opted for Institutional seniority. Accordingly, applicants had earlier preferred OAs and in pursuance of the same, they had preferred representation which was rejected vide order dated 1.11.2017, wherein the benefits under the DACP Scheme which were only non-functional financial upgradation of financial nature were denied to the applicants. The respondents thereafter issued the said orders vide letter dated 15.03.2018 (Annexure A/1) and letter dated 22.06.2018 (Annexure A/2) which are challenged by the applicants in the present O.A. as the benefits of DACP Scheme are wrongly denied to them.

3. The respondents after issue of notices filed their reply raising preliminary objection that the applicants have not exhausted remedies as per Section 21 of the Administrative Tribunals Act, 1985 as they should have represented to ESI Corporation as per letter of HQ dated 06.08.2018 for alternate solution of repatriation to State Govt. before approaching this Tribunal. Besides this, the respondents stated that the representations of the applicants were rejected by the

respondents by which the benefits of the DACP Scheme provided under the OM dated 29.10.2008 and 21.07.2009 have been denied to the applicants. However, the applicants have challenged the office letter dated 22.06.2018 with regard to the issue of grant of Non Functional Selection Grade (NFSG)/SAG (Senior Administrative Grade) scales under the DACP Scheme to absorbee doctors posted at ESIC Model Hospital Jaipur having opted for institutional seniority. However, the ESI Corporation under the Chairmanship of Hon'ble Minister of Labour & Employment, Government of India in its 174th meeting held on 29.05.2018, had considered an Agenda and Condition/Item No. ESIC-4 states that "All India Seniority of various State Govt. medical officers absorbed in ESIC on takeover of hospitals for maintaining equality and uniformity among medical officers working in ESIC and also paving way for eligibility of all absorbed doctors for grant of NFSG/SAG Scale under the DACP Scheme by maintaining the All India seniority". Thus, as the decision has been taken in the said meeting in public interest, the present applicants are not entitled for the benefits under the DACP Scheme. Also the applicants

had submitted their options for institutional seniority on 23.01.2007 in pursuance of the draft terms of absorption dated 03.06.2005 which was subsequently approved by the Department of Labour & Employment vide office letter dated 16.10.2006 and, accordingly, the absorbed doctors of the Model Hospital, Jaipur had submitted their options for institutional seniority. As per their options, the absorbees are only eligible for promotions upto the level of CMO (Grade Pay Rs. 7600/- as per 6th CPC) as the promotions upto this level were time scale promotions and were absolutely delinked with the vacancies. On the other hand, the absorbed Medical officers, who opted for All India seniority, were liable to be transferred on All India basis but were eligible for promotional posts beyond the level of CMO (i.e. grades of NFSG & SAG) against the promotional vacancies across the country. It is further stated that placement in Institutional seniority and grant of NFSG & SAG scales cannot go side by side as per approved terms and conditions of absorption and, therefore, the present applicants are deprived from promotions of NFSG & SAG grades. Hence, the present O.A. is liable to be rejected as there is no substantial force in the

submissions of the applicants in eyes of law. Therefore, respondents are justified in their action.

4. The applicants have filed their rejoinder denying the contentions raised by the respondents and added that the respondents have taken an arbitrary decision in its 174th meeting in the name of uniformity of medical officers working in ESIC and also in the name of providing eligibility of all absorbed doctors for grant of NFSG/SAG under DACP scheme by maintaining All India seniority. The action of respondents in allowing all Medical Officers who were previously placed in All India seniority to allow them to be considered for Institutional seniority on their making a representation and that the Corporation should have no objection for their repatriation to their parent State Govt., if so permitted. This action of respondents is highly contrary and arbitrary to the terms of option as the same has caused serious prejudice to all those who have been given the benefit of an option at the time of absorption and the respondents cannot be allowed to take a 'U' turn after implementing the terms of absorption. Thus, the said action of respondents in taking away the rights accrued in the applicants'

favour is highly unjustified and arbitrary as they have linked the issue of seniority and promotion with that of DACP benefits which has no nexus with each other. Therefore, the present O.A. deserves to be allowed as applicants are entitled for DACP benefits based on length of service rendered by them in accordance with the OM dated 29.10.2008 and 21.07.2009 from the date of implementation of OM dated 29.10.2008 and that their institutional seniority be maintained in the interest of justice.

5. The respondents have filed a Misc. Application No. 291/290/2021 placing on record the Undertakings of five out of ten applicants pointing out to be necessary documents, which are required to be considered by this Tribunal while deciding the present O.A. It was stated that leaving aside the present applicants, all the other applicants have withdrawn their names from the present matter as they did not want to pursue the matter in the interest of justice. The respondents have stated that all the present 05 applicants mentioned in the M.A. have already accepted the condition of placement in All India Seniority (Condition No. 4) and other conditions applicable in pursuance of the

Scheme introduced by ESI who opted for All India Seniority with a clear knowledge that they are liable to be posted anywhere in India and many of them have been transferred after placement in All India Seniority. Therefore, from the undertaking it clearly reveals that they have accepted the subsequent actions taken by the respondents considering the principles of equality and uniformity among Medical Officers working in ESIC and to grant promotion to NFSG scale issued vide order No. 21/2020, 22/2020 and 23/2020 dated 04.12.2020. The applicants have, thus, willingly and knowingly accepted the conditions and have submitted their Undertakings accordingly and now their demand for getting benefits of DACP Scheme is totally unacceptable. Thus, the present applicants are not entitled for the benefits as prayed for in view of the Undertakings submitted by them.

6. We have heard learned counsels for the parties at length through Video Conferencing and examined the pleadings minutely as well as the judgments cited by the parties along with written submissions.

7. The applicants besides reiterating their submissions further added that the action of the respondents in arbitrarily withholding the benefits of DACP Scheme and thereby denying financial upgradation to the applicants by wrongly applying options given for institutional seniority, is highly arbitrary and illegal. They have raised a ground that the respondents have erred in their letter dated 15.03.2018 that granting promotion to NFSG/SAG Scale to doctors who opted Institutional Seniority is not only against the "Terms of Absorption", but also detrimental to the interest of all those medical officers who opted All India Seniority. Applicants also raise the ground that it is absolutely wrong interpretation on the part of respondents in treating financial upgradation and promotion as one and the same. As all the absorbed employees had submitted their undertaking as desired vide ESIC letter dated 11/12.07.2011 with the request for promotion and DACP Scheme on implementation of the Scheme vide OM dated 29.10.2008 and 21.07.2009 so the benefits of the DACP Scheme are to be provided to the applicants. As DACP Scheme depends only on length of service as per OMs dated 29.10.2008 and 21.07.2009 on the other hand for

promotion, seniority is necessary. Thus, the applicants are entitled for DACP benefits and they cannot be deprived from the same.

8. On the other hand, respondents have reiterated their stand and stated that as per the impugned order dated 15.03.2018 and subsequent order dated 22.06.2018 communicated to the Medical Superintendent ESIC Model Hospital that as per the decision taken in 174th Meeting of the ESI Corporation, it was decided that now onwards ESIC will do away with the Institutional/State seniority and each and every absorbed Medical Officer will be placed under the All India Seniority to have equal opportunity of being promoted to the scale of NFSG & SAG. Further, in case of any representations are received from any of the absorbed medical officers, they may be allowed Institutional/State seniority. It was further stated that out of 08, all applicants have already accepted the condition of placement in All India Seniority and other conditions applicable in pursuance of the Scheme with a clear knowledge that they are liable to be posted anywhere in India and many of them have already been transferred after placement in All India Seniority.

Thus, as per order dated 04.12.2020, 88 Medical Officers who have opted for All India Seniority were promoted under DACP Scheme on the recommendations of the DPC and financial benefits of DACP Scheme have already been granted to them. Applicant No. 1 has already got promotion as CMO (NFSG) w.e.f. 01.04.2014. Also as per the said order, few of the applicants and others MOs have accepted the promotions to NFSG by submitting their undertakings. Thus, as per the undertakings as the applicants have willingly and knowingly accepted the placement in All India Seniority and also accepted the benefits as accrued to them, the present O.A. has become infructuous.

9. After hearing the parties and perusing the pleadings, the factual matrix of the case is that during filing of the present O.A., there were total 19 applicants and during the hearing of the present O.A., the same is pursued only by 10 applicants. The other applicants had sought permission to withdraw their names from the present matter as they were not interested and the said permission was granted by this Tribunal.

10. The facts as seen are that the applicants were earlier working as Medical Officers (MOs) with the State Govt. and later on they were absorbed in ESIC as on 30.10.2009. As per the terms of absorption dated 03.06.2005, the applicants had submitted their option for Institutional Seniority on 23.01.2007 and, accordingly, they had submitted undertaking to the Corporation. According to the said option, it was clear that the absorbed Medical Officers, who opted for Institutional/State Seniority, were to be posted in hospital only as per their options and, accordingly, they were eligible for promotions upto the level of CMO (Grade Pay Rs. 7600/- as per 6th CPC) because the promotions upto this level were time scale promotions absolutely delinked with the vacancies. On the other hand, those who had opted for All India Seniority, the absorbed Medical Officers were liable to be transferred on All India basis but were eligible for promotional posts beyond the level of CMO (i.e. to the grades of NFSG & SAG) against promotional vacancies across the country. But thereafter the Medical Officers who had accepted Institutional Seniority had made several representations for change of option as they had lost promotional avenues post implementation of

DACP w.e.f. 01.03.2008. Accordingly, in the 174th meeting of ESIC under the Chairmanship of Hon'ble Minister of Labour & Employment, Government of India held on 29.05.2018 considered an Agenda, according to which it was decided, Item No. ESIC-4, that All India Seniority of various State Government Medical Officers absorbed in the ESIC on takeover of Hospitals for maintaining equality and uniformity among medical officers working in ESIC and also paving way for eligibility of all absorbed doctors for grant of NFSG/SAG scale under the DACP Scheme by maintaining the All India Seniority extended the benefits of DACP Scheme to all Medical Officers absorbed who opted for Institutional Seniority w.e.f. 01.06.2008. It was also observed that if any employee wants to be considered in Institutional seniority, the ESIC shall have no objection for their repatriation to the State Govt., if they permit so.

11. We are clear that Institutional Seniority as well as All India Seniority were having different conditions. Once Medical Officer accepts Institutional Seniority, then he is bound by the conditions applicable to the said seniority and once he accepts All India Seniority,

he is bound by it. Therefore, placement in Institutional Seniority and grant of NFSG & SAG Scales cannot go side by side as per the terms of absorption to which all the present applicants had agreed by giving an undertaking to that effect at that relevant time. Thus, the letter dated 15.03.2018 (Annexure A/1) and letter dated 22.06.2018 (Annexure A/1-A) are self explanatory and the same clearly reveals that the applicants were not entitled to the benefits under the DACP Scheme.

12. We have also observed that as per order Nos. 21/2020, 22/2020 and 23/2020 dated 04.12.2020, the benefits of promotion under NFSG have already been granted to these applicants and they have availed the said benefits. As seen from the said order, 88 Medical Officers who have opted All India Seniority were promoted under DACP Scheme on recommendation of DPC and the financial benefits of DACP have also been given to the respective Medical Officers. Thus, most of the applicants have already accepted the condition of placement in All India Seniority as well as other conditions in pursuance of the Scheme introduced by ESIC who have opted All

India Seniority with a clear understanding that they are liable to be posted anywhere in India and many of them have already been transferred after placement in All India Seniority. Therefore, it is clear that as per the Undertakings submitted by these applicants they have accepted not only all the conditions but have also accepted the subsequent actions taken by the respondents. As seen applicant No. 1 whose name appears at Sl. No. 41 has been granted promotion of CMO (NFSG) w.e.f. 01.04.2014. Accordingly, names of 04 other applicants are also found at Sl. No. 78, 68, 69 and 59 as per order No. 23/2020 and they have also submitted undertaking to that effect and unconditionally accepted the said offer. Thus, when most of the applicants have themselves vide order dated 04.12.2020 accepted All India Seniority and have also accepted the promotional benefits and accepting all conditions, therefore, considering the subsequent developments, it is seen that ESIC has already decided to place all these Medical Officers in All India Seniority, they being Group 'A' Officers. Thus, having accepted the conditions of the said order and giving undertaking to that effect, the impugned letter dated 15.03.2018 (Annexure A/1) as well as letter

dated 22.06.2018 (Annexure A/1-A) which pertain to demand for promotion beyond CMO Scale in NFSG/SAG Scale as well as grant of DACP benefits having opted for All India Seniority becomes meaningless.

13. Reliance placed by the applicants towards O.A. No. 291/763/2019 (Smt. Sylvia Saroj vs. Union of India & Ors.) decided by this Tribunal vide order dated 04.03.2021 has nothing to do with the present case as the facts of the said case are completely different from the present one as Smt. Sylvia Saroj's matter pertains to transfer while the present matter pertains to grant of DACP benefits.

14. In the light of the observations made herein above, we, therefore, cannot interfere in the impugned letter dated 15.03.2018 (Annexure A/1) as well as letter dated 22.06.2018 (Annexure A/1-A) in view of the Undertakings submitted by most of the applicants and having willingly accepted all the conditions as per Order No. 23/2020 dated 04.12.2020. Thus, the present Original Application has

become infructuous as nothing remains to be adjudicated.

15. Accordingly, Original Application is dismissed as infructuous. No order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

Kumawat