

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 49 of 1999

Tues day this the 1st day of April, 2008

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. K.S. Menon, Member (A)

Dr. Binod Bhushan Bakshi, aged about 55 years, Son of Late R.S. Bakshi, Resident of P-1/3, War Memorial Enclave, Cantt., Kanpur, presently employed as Chief Medical Officer, Controllerate of Quality Assurance (General Stores) CQA (GS) Cantt., Kanpur.

Applicant

By Advocate Sri M.K. Upadhyaya

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. The Director General of Armed Forces Medical Services, Ministry of Defence, Government of India, New Delhi.
3. The Controller, Controllerate of Quality Assurance (General Stores), Cantt., Kanpur.

Respondents

By Advocate Sri Ashok Mohiley

ORDER

By K.S. Menon, Member (A)

The applicant has filed this O.A. seeking directions to the respondents to grant him the benefit of placement in the Non-Functional Selection Grade (NESG) in the pay scale of Rs.14300-400-18300 with effect from 01.01.1991 with all consequential benefits.

2. It has been stated that Chief Medical Officer are recruited through the U.P.S.C. in all departments of the Government of India, including Central Government Health Scheme, Railways and the Ordnance Factory Board. The applicant was initially recruited to the post of Assistant Surgeon Grade I by the U.P.S.C. on 27.07.1968. He belongs to the Civilian cadre of Doctors of the Directorate General of Armed Forces Medical Services, Ministry of Defence and was working as the Chief Medical Officer (Rs.12000-375-16500) under respondent No. 3 at the time of filing this O.A. on 18.01.1999. The applicant's grievance is that the respondents have not acceded to his request for placement in the Non-Functional Selection Grade (Rs.14300-400-18300) at par with similar benefits enjoyed by other Civilian Medical Officers including

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Medical Officers of other Departments like Railways, Central Government Health Services and Defence Establishments like Ordnance Factory Board, which he claims is discriminatory. Applicant has placed reliance on the Judgment dated 06.12.1991 passed by the Principal Bench of the Central Administrative Tribunal, New Delhi in the case of Association of Civilian Officers of Armed Forces Medical College, Pune, which directed as under: -

"Suitable concrete measures should be evolved and notified for providing reasonable avenues of promotion to the incumbents of the post of Demonstrators in the AFMC, Pune."

Pursuant to the aforesaid direction of the Tribunal, the Ministry of Defence issued a circular dated 02.12.1993. By this circular all the isolated posts of Demonstrators in AFMC Pune, Assistant Surgeon Grade I under the DG AFMS and Civilian Medical Officers of the Indian Navy were brought under one unified group called "Civilian Medical Officers" in order to provide promotional avenues to the incumbents in the above mentioned isolated groups. The three levels of posts in the unified group were as under: -

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|-------|---------------------------------------|---------------------|
| "(i) | Assistant Director Medical Services : | Scale Rs.3700-5000 |
| (ii) | Senior Civilian Medical Officer : | Scale Rs.3000-4500. |
| (iii) | Civilian Medical Officer : | Scale Rs.2200-4000. |

The applicant came under this unified cadre of 'Civilian Medical Officers'. Civilian Medical Officers of the Indian Navy being aggrieved with the discrimination and disparity sought parity in the matter of promotional avenues and other service benefits at par with Medical Officers similarly situated in various other departments of the Govt. of India such as Ordnance Factories, Railways and C.G.H.S. etc. A similarly situated Doctor filed an O.A. No. 287 of 1991 (Dr. Pushpa Deshpande Vs. U.O.I. and Others) in this regard before the Central Administrative Tribunal, Bombay Bench through the Indian Navy Civilian Officers Association. The Tribunal allowed the O.A. and passed the following Order: -

- "(i) The relief granted vide letter dated 14.11.____ are allowed to applicants. The applicants are entitled parity in the scale of pay similar to Civilian doctors of Ordnance. Factories, Govt. Mint., Family Welfare doctors in Navy, Railway etc. and also re-fixation of pensionary benefits in the case of the applicants who are superannuated during the pendency of the O.A.
- (ii) Conveyance allowance as admissible to above comparable doctors of other Govt. Departments.

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- (iii) *Benefit of added service as per Rule 30 of CCS (Pension) Rules which is extended to comparable doctors referred to above including Family Welfare Doctors of Navy.*
- (iv) *Parity in the matter atleast two time bound promotions to the post of Senior Medical Officer, and Chief Medical Officer from 1987 as per 'package deal' extended to other doctors also.*

Pursuant to the aforesaid order of Central Administrative Tribunal, Bombay, the Ministry of Defence vide its Order dated 20.08.1996 granted reliefs and parity to the redesignated Civilian Medical Officers under the D.G. AFMS. In compliance with the aforesaid Judgment and Orders of Ministry of Defence, the applicant was promoted as Senior Medical Officer and Chief Medical Officer retrospectively w.e.f. 01.01.1987 and 01.01.1989 respectively vide Ministry of Defence Order dated 31.12.1996 (annexure A-6).

3. It appears that the Railway Medical Officers Association had succeeded in procuring a package deal regarding promotional avenues, grant of annual allowance etc. w.e.f. 01.07.1987. The applicant's contention is that as per this package deal (which is applicable to all other Medical Officers in various other departments) 15% of the authorized strength is to be placed in the Non-Functional Selection Grade (Rs.14300-400-18300) on completion of two years service as Chief Medical Officer subject to availability of posts. Accordingly the applicant having completed more than two years of service as Chief Medical Officer i.e. from 01.01.1989, as mentioned in the earlier paragraphs, he is entitled for placement in the NFSG w.e.f. 01.01.1991 as given to similarly placed Medical Officers in the Railways, C.G.H.S. and Ordnance Factory Board, under the Ministry of Defence. Being aggrieved by the inaction of the respondents he submitted representations on 29.05.1997 and 08.06.1998 (annexure A-9 and A-10) to the D.G. AFMS. Since there was no response, he filed this O.A. on 18.01.1999, praying that the respondents be directed to grant him the benefit of placement in the NFSG in the scale of Rs. 14300-400-18300 retrospectively from 01.01.1991 (i.e. the date he completed two years as Chief Medical Officer) with all consequential benefits. The applicant has relied on the following Judgments in support of his claim:

- "1. 1985 SCC (L&S) 826, *P. Savita and others Vs. Union of India, Ministry of Defence (Department of Defence Production) New Delhi, and others.*
- 2. 1982 SCC (L&S) 119, *Randhir Singh vs. Union of India and others.*

3. 1988, S.C.C. (L&S) 785, *Jai Pal Singh & Others vs. State of Haryana and others.*
4. 1999 SCC (L&S) 919 *Kamlakar and others vs. Union of India and others.*
5. *Narendra Singh and others vs. Union of India and others (Reported in Swamy News).*
6. 2004 SCC (L&S) 857 *State of Mizoram and another vs. Mizoram Engineering Service Association & others.*
7. 2006 SCC (L&S), 1804 *State of Haryana and others vs. Chandra Jeet Singh and others.*

All the above citations deal with the doctrine of "Equal Pay for Equal Work".

4. The respondents in their Counter Reply argue that the principle of Equal Pay for Equal Work is not applicable in the case of the applicant. They hold the view that differentiation on the basis of higher experience reliability and responsibility has to be recognized and the above principle of equal pay for equal work cannot be straight away applied and made applicable. Evaluation of duties and responsibilities of two posts may appear to be the same or similar but there may be difference in the degree of performance. This is an issue which can best be determined by expert bodies like the Pay Commission and cannot be determined by Courts or Tribunals relying upon averments in affidavits of interested parties. That is why Tribunals would not normally interfere with the pay scales given to different category of employees based on the report of the Pay Commission.

5. The respondents submit that in pursuance of the Central Administrative Tribunal, Mumbai Judgment in O.A. No. 281 of 1991 which directed grant of benefit of two time bound promotions to the applicants in the aforesaid O.A. as a part of a package deal. The applicant in the present O.A. was also granted two time bound promotions retrospectively w.e.f. 01.01.1987 and 01.01.1989 and the present respondents were not required to grant NFSG as per the aforesaid package to the applicant. Respondents add that if that was so NFSG would have been granted at the time of granting respective time bound promotions to all Doctors concerned when the Ministry of Defence passed orders on 31.12.1996 at Annexure A-6. Besides there were no representations immediately thereafter claiming such NFSG to be given to those concerned. It is therefore clear that the Government had implemented the aforesaid Judgment of the Central Administrative Tribunal, Mumbai in letter and spirit. Since NFSG was not envisaged in

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the said package deal relied upon by the applicant the question of extending such a benefit to doctors under the DGAFMS (like the applicant) does not arise more so when the DGAFMS was not part of the package deal. The respondents further submit that service conditions varies widely in different departments of the Government of India and Chief Medical Officers are placed unit wise all over the country. The hierarchical structure under the DGAFMS does not provide for an appointment beyond the rank of Chief Medical Officer, hence further promotion beyond the Chief Medical Officer is not possible, hence the applicant's plea is not acceptable. Respondents have relied on the following Judgments in support of their stand: -

1. 1981 SCC (L&S) 293 (paras 5 & 6) *Dr. C. Girijambal Vs. Government of Andhra Pradesh.*
2. 1989 SCC (L&S) 71 *State of U.P. & Others Vs. J.P. Chaurasia and others*
3. AIR 1989 SC 1256 *Mewa Ram Kanojia Vs. All India Institute of Medical Sciences & Others.*
4. AIR 1988 SC 1291 *Federation of All India Customs & Central Excise Stenographers & Others Vs. Union of India and others.*
5. AIR 1990 SC 334 *Supreme Court Employees Welfare Association Vs. Union of India and others.*
6. AIR 1989 SC 30 *Tarsem Lal Gautam Vs. State Bank of Patiala.*
7. JT 1989 Vol.3 SC 296 *Harbans Lal Vs. State of Himachal Pradesh.*
8. 1993 SCC (L&S) 157 (para 12) *Secretary Finance Dept. and others Vs. West Bengal Registration Service Association and others.*
9. 2003 (1) A.T.J. 240 S.C. *State of Haryana Vs. Haryana Civil Secretariat Personal Staff Associations.*

In all the above Judgments it has been held that it is open to the State to prescribe different scales of pay for different posts based on qualifications, duties and responsibilities and they are the best Judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, Courts should normally accept it. In view of this, respondents urge that the applicant's plea is devoid of merit and is liable to be rejected.

6. We have heard Sri M.K. Upadhyaya, Counsel for the applicant and Sri Ashok Mohiley, Counsel for the respondents and perused the pleadings and the Written Submissions filed subsequently by both the parties.

7. Perusal of the pleadings indicate that the applicants earlier grievance regarding parity with other similarly placed Civilian Medical Officers in other Central Government departments has been fully addressed in terms of the Ministry of Defence DG AFMs letter dated 31.12.1996. By this letter the applicant was granted two time bound promotions to Senior Medical Officer and Chief Medical Officer w.e.f. 01.01.1987 and 01.01.1989 respectively. The directions of the Tribunal, Mumbai Bench which the applicant has relied upon therefore appears to have been fully implemented in letter and spirit.

8. The applicant's grievance pertains to the period after 01.01.1989 when he was promoted as Chief Medical Officer and has been working in that same capacity till his superannuation. Consequent upon grant of two time bound promotions granted to the applicant as mentioned above, the seniority list published by the respondents showed the applicant's name at serial No. 10 (annexure A-6). All other similarly placed Medical Officers of departments like the Railways, C.G.H.S. and Ordnance Factory Board etc. were given the placement in the N.F.S.G. A copy of the Ordnance Factory Board Seniority List showing the dates of grant of NFSG in respect of Civilian Medical Officers of the Ordnance Factory Board has been annexed as Document No. 2 to M.A. No. 5176 of 2001 (Prayer for filing documents). Applicant submits that given his position in the seniority list published by the DGAFMS on 31.12.1996 he should have been placed in the higher grade (NFSG) w.e.f. 01.01.1991 after completion of two years as given to similarly placed officers under the Ordnance Factory Board and other departments in pursuance of Government decision on the recommendation of Sri R.K. Tikku committee, especially after Government of India vide its O.M. dated 06.06.2000 increased the ceiling for grant of N.F.S.G. from 15% to 30% (Document No. 1 of M.A. 5176 of 2001), subject to availability of vacancies.

9. It is clear that the grant of N.F.S.G. to the extent of percentages prescribed is subject to availability of vacancies. In the existing structure under the D.G. AFMS all C.M.O. posts are unit wise and there is no centralized cadre of C.M.Os and consequently no post exists beyond that of C.M.Os and that is why as the respondents contend that no NFSG can be given to the applicant as prayed for.

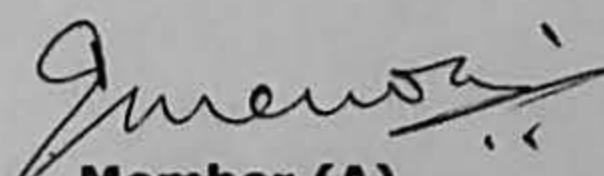
10. Admittedly doctors in various departments of the Government of India do not have identical hierarchical structure and service conditions

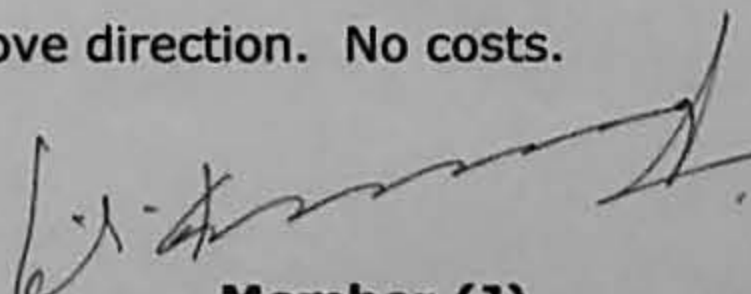
from the stage of recruitment to superannuation and therefore grant of similar benefits cannot be automatically extended to all. Besides the recommendations of the Tikku Committee refers to placement in the NFSG subject to availability of vacancies. In the case of the applicant there is no question of availability of vacancy as there is no post above the C.M.O. of various units under the DG AFMS unlike the Medical Officers cadre under the CGHS where there are NFSG posts which culminate in the post of Director General. Since there is no post available for further promotion the respondents are to an extent correct in not being able to grant the applicant the NFSG grade. We are therefore unable to find any fault with the action/inaction of the respondents, which are in accordance with the existing rules on the subject.

11. Having made the above observation we are also of the view that the respondents should re examine the issue in respect of all categories of doctors under the DGAFMS to bring them on par with that of the Medical Officers of the Ordnance Factory Board, which also comes under the same Ministry of Defence to which the applicant belongs. Since both are appointed by UPSC and perform similar kind of duties (and have been granted two time bound promotions) there could be some scope to try and extend the benefits to such effected doctors like the applicant, who has been stagnating for the last more than 14 years. The question of vacancy of a post would not perhaps come into the picture as apprehended by the respondents as 30% of the duty posts of CMO would need to be reckoned for placing the applicant in the upgraded NFSG pay scale of Rs. 14300-400-18300/-.

12. On re examination of the case, in case the respondents come to the conclusion/decision that the applicant can be upgraded to NFSG then they shall pass such appropriate orders with a stipulation that the applicant would not be entitled to any back wages, but pension shall be recalculated on the enhanced pay as refixed and arrears of pension shall be paid accordingly. This whole exercise should be completed within a period of 6 months from the date of receipt of a copy of this order.

13. The O.A. is disposed off with the above direction. No costs.


Member (A)


Member (J)

/M.M./