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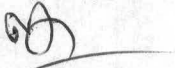
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.


Original Application No.94 of 2008  
Cuttack, this the 17th day of February, 2009

Dr.Ashok Ku.Mohapatra & Ors. .... Applicant  
Versus  
Union of India & Ors. .... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?

  
(JUSTICE K. THANKAPPAN)  
MEMBER (JUDICIAL)

  
(C.R. MOHAPATRA)  
MEMBER (ADMN.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

O.A.No.94 of 2008

Cuttack, this the 17th day of February, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)  
A N D  
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

1. Dr. Ashok Kumar Mohapatra, Aged 44 years, Son of Sri Radhashyam Mohapatra at present working as Medical Officer (MO), At-ARC Hospital, Charbatia, PS-Choudwar, Dist. Cuttack, Orissa.
2. Dr.Manohar Lal, aged about 40 years, S/o.Sri Mohan Lal at present working as Medical Officer (MO) at ARC Hospital, Palam, PS-Mahipalpur, New Delhi and Ex-Medical Officer on tour to the ARC Hospital at Charbatia, PS: Choudwar Dist Cuttack, Orissa.
3. Dr. Nishamani Behera, age 54 years, Son of Late Ananda Chandra Behera at present working in his parent cadre of Medical Officer (MO) and holding the post of Senior Medical Officer (SMO) on adhoc basis, At: ARC Hospital, Charbatia, PS:Choudwar, Dist. Cuttack, Orissa.

.....Applicant

By the Advocate:M/s.S.B.Panda, P.K.Beura, M.K.Dash.

- Versus -

1. Union of India represented by its Secretary, Ministry of Finance, Department of Expenditure, E.III Desk, North Block, New Delhi.
2. Secretary, Department of Personnel & Training, Establishment (D), Government of India, North Block, New Delhi.
3. Additional Secretary, Government of India, Cabinet Secretariat, Bikaner House Annexee, New Delhi.
4. Director General of Security, Aviation Research Centre, At-Directorate General of Security, Cabinet Secretariat, Government of India, Block-V(East), R.K.Puram, New Delhi.
5. Special Secretary, ARC, Directorate General of Security, Cabinet Secretariat, Government of India, Block-V (East), R.K.Puram, New Delhi.
6. Member Secretary, 6<sup>th</sup> Pay Commission, Ministry of Finance, P.O.Bag No.001, Vasant Kunj Post Office, New Delhi-110 070.
7. Deputy Director (Administration), ARC, Charbatia, PS: Choudwar, Dist. Cuttack, Orissa.
8. Deputy Director (Administration), ARC, Air Wing, Directorate General of Security, Government of India, Block-V (East), R.K.Puram, New Delhi.

....Respondents

By Advocate :Mr. U.B.Mohapatra.

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ORDER

MR. C.R.MOHAPATRA, MEMBER (A):-

All the three Applicants in this OA are working as Medical Officer in the ARC Hospital, Charbatia. By filing this OA, it has been alleged that in the year 1990 considering the need to rationalize the cadre-structure among the Medical Officers of the Central Health Services in order to improve the efficiency, morale and effectiveness of the cadre and to provide better future promotional avenues and in accordance with the guidelines framed by the Ministry of Health and Family Welfare, there was a review of the cadre structure of the said Medical Officer of the Central Health Services Cadre by a High Power Committee (commonly known as 'Tikku Committee/Commission'). On the basis of the said Tikku Committee/Commission Report, Respondent No. 5 in the year 1992 formed a High Power Committee headed by the then Principal Director, Cabinet Secretariat who had offered his suggestion in regard to cadre structure of the Medical Officers under the ARC. Based on such recommendation, Draft Recruitment Rules was framed by the Respondent No.5 during 1994 and placed before the Government/appropriate authority for its approval. In the meantime 5<sup>th</sup> Central Pay Commission was set up and the matter was placed before it for consideration. Further case of the Applicants is that as there was no proper consideration of the grievance of Applicants in the 5<sup>th</sup> CPC, a fresh review of the ARC Medical Officers cadre was undertaken and a report was forwarded to Respondent No.3 on 13.2.1998. The 5<sup>th</sup> CPC recommended introduction/implementation of Dynamic Assured Career Progression

Scheme for officers of the Central Health Services. Vide communication dated 5.4.2002, the Government of India in Ministry of Health and Family Welfare (Department of Health) intended to immediate implement the said DACP scheme for the officers of the Central Health Service only. Vide letter under Annexure-6, dated 09.05.2003, Respondent No.5 made efforts to bring the ARC Doctors under the purview of DACP. Pursuant to the letter under Annexure-6 Respondent No.1 vide its order under Annexure-7, dated 13.08.2003 directed for implementation of the DACP as far as the Medical Officers of the ARC are concerned. It was also ordered that promotion avenues under the DACP will be made without linkage to vacancies and the said scheme was ordered to take effect prospectively w.e.f. 13.08.2003 subject to the amendment of recruitment rules in consultation with Respondent No.2. It is the contention of the Applicants that by making representation under Annexure-8 they have prayed for extension of the benefit of DACP to the ARC Doctors w.e.f. their date of joining in the ARC. While the matter stood thus, by issuing order under Annexure-9 dated 25.8.2006, the Respondents allowed the benefits to Dental Doctors serving under the Ministry of Health and Family Welfare w.e.f. 25.08.2006. But instead of allowing the benefit of DACP to the Applicants, by the order of the Respondent No.1 dated 28/29.08.2006, Respondent No.3 without due application of mind referred the issue to the Sixth Central Pay Commission and have sought recommendation of the said Commission on the selfsame proposal which was placed and approved by the 5<sup>th</sup> Pay Commission. Being aggrieved by the said decision of the Government, the

applicants preferred representations. According to the Applicants as their representations did not yield any result, they have approached this Tribunal in the present Original Application seeking the following relief:

- “8.1. Without prejudice to the proposals vide Annexure-10, the order/letter/decision dtd.17.07.2002 vide Annexure-10 may be quashed and all consequential actions/decisions pursuant thereto may be declared illegal and void;
- 8.2. The Government-Respondent No.2 may be directed to accept the proposals vide Annexure-10 and to allow the Respondent No.5 to suitably amend the relevant Recruitment Rules with retrospective effects;
- 8.3. Without prejudice to the proposals vide Annexure-10, the Respondents, more particularly the Respondent Nos. 1,2 and 5 be jointly directed to forthwith extend the sequential benefits of the Tikku Committee Report and the DACP Scheme to the instant Applicants with retrospective effects from the respective dates of their joining in the ARC as evident under Annexure-1 series, thereby promoting them now to the posts of Chief Medical Officers (Selection Grade);
- 8.4. The Respondents may further be directed to release all consequential financial benefits (both regular and arrear along with due interests thereon) in favour of the Applicants;
- 8.5. The penal interests awarded, if any, may be recovered from the erring officials who have been responsible for the unjust delay in the matter of extending the legitimate benefits in favour of the Applicants;
- 8.6. Any other consequential relief/relieves as would be deemed just and proper may be granted in view of the facts and circumstances of the case.”

2. Respondents opposed the interference of this Tribunal at this point of time. Their stand is that the matter was referred to 6<sup>th</sup> CPC who on considering all aspects of the matter have already submitted its report. The Applicants should have waited for the decision of the Government instead of approaching this Tribunal in the present OA. The recruitment rules in question could not be



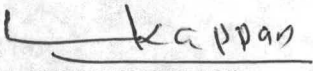
finalized due to want of approval of the DOP&T and Ministry of Finance. Action for extending the benefits of ACP (vide letter dated 5.4.2002) to the officer of Central Health Service) to ARC Medical Officer was taken up with the concerned authorities like Cabinet Secretariat, Ministry of Finance DOP&T etc. The Order dated 13.08.2003 of the Cabinet Secretariat extending the DACP scheme to ARC Medical Officers was subject to amendment of Recruitment Rules. While examining the amendment of the Recruitment Rules, DOP&T decided to link the whole issue again with the case of Dental Surgeons which was then under consideration of Committee of Secretaries. Subsequently, however, the case was finally linked with 6<sup>th</sup> CPC. Steps taken for de linking the proposal for placing the matter before 6<sup>th</sup> CPC was also taken up with Ministry of Finance through Cabinet Secretariat. Concerned quarters in the Ministry were pursued to extend the benefits of DACP scheme to ARC MOs. DG of Security, Cabinet Secretary requested vide letter dated 25.5.2006 for extension of DACP scheme to ARC Medical Officers. Despite much persuasion, de-linking the proposal from 6<sup>th</sup> CPC proved futile. Now recommendation of 6<sup>th</sup> CPC has already been submitted and as such quashing of Annexure-10 does not arise.


3. By filing affidavit the Applicants have brought to the notice of the Resolution dated 29<sup>th</sup> August, 2008 and have stated that the demands of the Applicant have been met by the Respondents and it is now only to be implemented. They have specifically relied on paragraph 12 of the said resolution where in the present grievance of

the Applicant have been met. This has not been controverted by the Respondents.

4. In view of the above, having heard rival submissions of the parties, this Original Application is disposed of with direction to the Respondents to grant the benefit of the DACP available in order under Annexure-A/7 dated 13<sup>th</sup> August, 2003 and reiterated in the Government of India resolution under Annexure-19 dated 29<sup>th</sup> August, 2008 to the Applicants subject to fulfilling other norms within a period of 90 days from the date of receipt of copy of this order. Simultaneously, the Respondents are hereby directed to take all steps and make all endeavour for amendment of the Recruitment Rules within the said period.

5. With the above observations and directions this OA stands allowed by leaving the parties to bear their own costs.

  
(JUSTICE K. THANKAPPAN)  
MEMBER (JUDICIAL)

  
(C.R. MOHAPATRA)  
MEMBER (ADMN.)