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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

OA No.4/2010

Cuttack, this the 5th day of August, 2011

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

AND

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

.....

Dr. Nishamani Behera, age 55 years, Son of Late Ananda Chandra Behera at present working in his parent post of Medical Officer (MO), but holding the post of Senior Medical Officer (SMO) on adhoc basis, At: ARC Hospital, Charbatia, PS:Choudwar, Dist. Cuttack, Orissa.

.....Applicant

By the Legal Practitioner: M/s.S.B.Panda, B.Bahali, Counsel
- 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. Assistant Director (Administration), ARC, Charbatia, PS: Choudwar, Dist. Cuttack, Orissa.

....Respondents

By Advocate:Mr. U.B.Mohapatra.

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ORDER

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

The Applicant was selected and appointed as Civil Assistant Surgeon vide order under Annexure-1 dated 21.04.1981 in the ARC, Charbatia Hospital. Having joined on 27.4.1981, he was confirmed in the year 1999. Vide order under Annexure-5 dated 13th August, 2003, the Government of India, accepted and directed for implementation of the recommendation of the 5th CPC regarding Dynamic Assured Career Progression Scheme for officers of the Aviation Research Centre Civilian Assistant Surgeon (Grade-I) (re-designated as Medical Officers) in which it was provided as under:

“2. Medical Officer (Rs.8000-13,500/-) will be promoted to Senior Medical Officer (Rs.10000-15,200/-) on completion of four (4) years of regular service. Senior Medical Officer with five (5) years of regular service as Senior Medical Officer will be promoted to the post of Chief Medical Officer (Rs.12, 000-16,500). After completion of four (04) years of regular service as Chief Medical Officer the Officer will be promoted to the post of Chief Medical Officer (Non-Functional Selection Grade)(Rs.14300-18300/-).

3. The above mentioned promotions will be made without linkage to vacancies.

4. The scheme of Dynamic Assured Career Progression (DACP) shall take effect prospectively from the date of issue of these orders subject to the amendment of the Recruitment Rules, in consultation with DP&T.”

2. The Ministry of Health and Family Welfare
(Department of Health & Family Welfare) Nirman Bhawan,

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New Delhi vide order dated 25th August, 2006 extended the benefit of DACP to the Dental Doctors working under the Ministry of Health and Family Welfare from the date of issue of the order whereas instead of implementing the DACP scheme for the Doctors working under the Respondents, it was decided in letter under Annexure-8 dated 17th July, 2007 to place the issue before the VIth Central Pay Commission. Thereafter, the Applicant along with others preferred representations and alleging no action on their representation, Applicant along with others approached this Tribunal in OA No. 94 of 2008 with the following prayer:

- “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."

3. The Respondents, by filing counter in the aforesaid

OA No. 94 of 2008 opposed the prayers of the Applicant.

While the matter stood thus, Resolution dated 29th August, 2008 of the Ministry of Finance (Department of Expenditure)

accepting the proposal of the VIth CPC in regard to extending the benefit of DACP to the doctors was published. Paragraph

12 of the resolution being relevant is quoted herein below:

"12. The Dynamic ACP Scheme for Doctors will be extended upto Senior Administrative Grade (grade pay of Rs.10000 in PB-4) for Medical Doctors having 20 years of regular service, or seven years of regular service in the non-functional selection grade of Rs.8700 grade pay in PB-4. Also, all the Medical Doctors, whether belonging to Organized Services, or holding isolated posts, will be covered by the DACP Scheme."

4. Hence by filing affidavit the Applicants in OA No. 94 of 2008 have brought to the notice of this Tribunal copy of the Resolution dated 29th August, 2008 and have stated that in view of the Resolution, direction may be issued to the Respondents to extend the benefits to the Applicants. This was not controverted by the Respondents. As such, after hearing the matter at length, this Tribunal disposed of the

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said OA No. 94 of 2008 on 17th February, 2009. Relevant portion of the order dated 17th February, 2009 in OA No. 94 of 2008 is quoted herein below:

“3. By filing affidavit the Applicants have brought to the notice of the Resolution dated 29th 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 13th August, 2003 and reiterated in the Government of India resolution under Annexure-19 dated 29th 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.”

5. In Office Memorandum under Annexure-11 dated 17-02-2009, the Respondents held that as per the Ministry of Health & Family Welfare OM No. A.45012/2/2008-CHS.V dated 29.10.2008 Dr.N.Behera is eligible to be placed in Senior Administrative Grade with GP of Rs.10,000/- in PB-4. Thereafter, vide order under Annexure-28th July, 2009, Respondents issued the following order:

“Consequent upon acceptance of the 6th Central Pay Commission recommendations by the Government vide para 12 of Ministry of Finance Resolution No. 1.1.2008-IC dated 29.08.2008, approval of the Government is hereby conveyed to the extension of Dynamic Assured Career Progression (DACP) Scheme to the Medical Doctors of Aviation



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Research Centre (ARC) as outlined in Ministry of Health OM No. A-45012/2/2008-CHS.V dated 29th October, 2008 (copy enclosed).

2. For initial implementation of the Dynamic Assured Career Progression (DACP) Scheme, the following are the illustrations:

- (a) A Medical doctor with less than 13 but more than 9 years of service whether in the grade pay of Rs.5400/- in the pay band PB-3 or in the grade of Rs.6600/- in the pay band PB-3 can be directly placed in the revised pay structure of grade pay of Rs.7600/- in the pay band PB-3;
- (b) A Medical Doctor with more than 13 years of service whether in the grade pay of Rs.5400/- in the pay band PB-3 or in the grade pay of Rs.6600/- in the pay band PB-3 or in the grade pay of Rs.7600/- in the pay band PB-3 can be directly placed in the NFSG pay structure of grade pay of Rs.8700/- in the pay band PB-4;
- (c) A Doctor with more than 20 years of regular service and already regularly promoted to CMO, NFSG (grade pay of Rs.8700/- in the pay band PB-4) on the date of initial implementation of the scheme can be granted SAG pay structure of grade pay of Rs.10000/- in the pay band PB-4 without rendering full seven years of service in the NFSG grade;
- (d) After the initial implementation of the Scheme, Government servants will be granted financial up-gradation under DACP based on the service prescribed in Ministry of Health & Family Welfare OM dated 29th October, 2008.

3. Approval of the Government is also accorded to the extension of similar dispensation to Specialist/Doctors working in ARC who are appointed directly in the grade pay of Rs.6600/- in PB-3 (pre revised scale of Rs.1,2000-16500/-) as per the minimum service prescribed in their case by Ministry of Health & Family Welfare OM dated 29.10.2008."

6. In Office Memorandum under Annexure-14 dated 29th October, 2008, Ministry of Health & Family Welfare, CHS Division, Government of India, New Delhi issued orders in which it was provided that for financial up gradation under DACP Scheme from GPB Rs.8700/- in PB -4 to GP Rs.10000 in PB-4 seven years in Grade Pay of Rs.8700/- in PB-4 including service rendered in the pre revision scale of Rs.14300-18300/- or 20 years of regular service is required.

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7. Based on the aforesaid OMs/Orders, the competent authority conveyed the approval for grant of NFSG pay structure of GP Rs.8700/- in PB-4 Rs.37,400/--67,000/- under DACP scheme to the applicant w.e.f. 29.10.2008. Hence, the Applicant who is at present working as Senior Medical Officer (SMO) on adhoc basis at ARC Hospital, Charbatia, PS Choudwar, Dist. Cuttack, Orissa by filing the present OA has sought the following reliefs:

“8-1. Save and except the admitted dues as contained in the order dtd.21.10.2009 vide Annexure-10, the said order vide Annexure-10 and Annexure-13 may be quashed.

8-2. The Government-Respondent No.1 may be directed to extend the benefit in favour of the Applicant as contemplated under Para-12 of the resolution vide Annexure-12, dtd. 29.08.2008 and under the Memorandum dtd. 17.02.2009 vide Annexure-11 w.e.f. dtd. 13.08.2003 as per the order dtd. 17.02.2009 passed by this Hon'ble Tribunal in OA No. 94/2008;

8-3. Without prejudice to the prayers made herein above, 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 Applicant with retrospective effects from the date of his joining in the ARC (i.e. dtd. 27.04.1981) thereby promoting him now to the posts of Chief Medical Officer (Non-Functional Selection Grade), Senior Administrative Grade from which post/position the Applicant is supposed to retire w.e.f. 27.04.2014 on attaining the age of superannuation;

8-4. The Respondents may further be directed to release all consequential financial benefits (both regular and arrears along with due interests accrued thereon) in favour of the Applicant;

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 Applicant;

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.”

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8. The Respondents opposed the stand taken by the Applicant in his Original Application in support of the aforesaid relief. On receipt of the counter, by filing rejoinder, the Applicant has tried to justify his claim made in the OA. Thereafter, by filing additional Counter, the Respondents more or less reiterating the stand taken in the preliminary counter have also tried to justify that the Applicant has no case and this OA being devoid of any merit is liable to be dismissed.

9. The contention of the Applicant's Counsel is that the Applicant has got no promotion during his 28 years of elongated continuous service period on the plea that the Medical Officer in ARC is an isolated post with no promotional avenues although it is trite law that any rule providing no promotional avenue is void ab initio and, therefore, non-availability of promotional avenue under the ARC Rule on the plea that the post of Medical Officer in ARC Hospital being an isolated post shall not operate as a bar against the lawful entitlements of the applicant. Hence it was



contended by the Applicant's counsel that the DACP Scheme being a policy decision of the Government which has no linkage to the vacancy/cadre and was only linked with the service tenure of the beneficiary with floating concept which was well received and fairly implemented through out the country in each of the Central Government undertakings there can be no reason why the same could not be implemented to the Medical Officers in the ARC thereby causing culpable discrimination between the similarly circumstanced employees. Further contention of the applicant's counsel is that the direction of this Tribunal in earlier OA No. 94 of 2008 was that the Respondents would grant the benefit of the DACP to the Applicant as per the order dated 13th August, 2003 which has been reiterated in Government of India resolution dated 29th August, 2008. This direction was passed by this Tribunal without any objection of the Respondents side. The Order dated 13th August, 2003 and the Resolution dated 29th August, 2008 provide that the Dynamic ACP Scheme for Doctors will be extended upto



Senior Administrative Grade (grade pay of Rs.10000 in PB-4) for Medical Doctors having 20 years of regular service, or seven years of regular service in the non-functional selection grade of Rs.8700 grade pay in PB-4. Also, all the Medical Doctors, whether belonging to Organized Services, or holding isolated posts, will be covered by the DACP Scheme. Therefore, non-extension of the benefits of financial up gradation in compliance of the orders of this Tribunal in adherence to the Government of India Resolution in letter and spirit while granting the said benefits to other similarly situated Doctors amounts to violation of the orders of this Tribunal vis-à-vis discrimination offending the provisions enshrined in Articles 14 and 16 of the Constitution of India. Hence, Learned Counsel appearing for the Applicant reiterated grant of the relief claimed in this OA.

10. The above stand, per contra, is contested by the Respondents' Counsel on the ground that consequent upon the recommendation of the 6th CPC, Government of India extended the Dynamic ACP scheme to Medical Officers

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notwithstanding belonging to Organized services or holding isolated posts vide GoI OM dated 29.10.2008. The DACP scheme was extended to MOs of ARC w.e.f. 29.10.2008 and accordingly, as per the orders of the competent authority and in compliance of the order of this Tribunal, the applicant including other similarly situated Doctors working under ARC Hospital was granted the NFSG pay structure GP Rs.8700/- w.e.f. 29.10.2008. The Government of India has clarified at point 2 (c) of the order dated 28.7.2009 that a doctor with more than 20 years of regular service and already regularly promoted as CMO-NFSG (Grade Pay of Rs.8700/- in the pay band PB -4) on the date of initial implementation of the scheme can be granted SAG pay structure of grade pay of Rs.10, 000/- in the pay band PB-4 without rendering full seven years of service in the NFSG grade. In the instant case though the applicant had rendered service in excess of 20 years yet he had not been appointed as CMO-NFSG on regular basis on the date of implementation of the scheme, a condition precedent to placement in SAG pay structure.

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Therefore, according to the Respondents' Counsel the applicant is not entitled to the SAG pay structure of Grade Pay of Rs.10, 000/-. The condition at paragraph 12 of the Resolution dated 29.8.2008 did not envisage placement of an incumbent in the pay structure meant for SAG scale with GP of Rs.10,000/- merely on completion of 20 years of regular service without having been appointed in NFSG (CMO-NFSG) with GP of Rs.8700/-. In view of the above, Respondents' Counsel strongly urged for dismissal of this OA.

11. Having given our thoughtful consideration to various points raised by the parties, we have perused the materials placed on record.

12. The order of this Tribunal dated 17th February, 2009 in OA No. 94 of 2008 was to grant the benefit of the DACP available in order dated 13th August, 2003 and reiterated in the Government of India resolution dated 29th August, 2008 to the Applicants subject to fulfilling other norms and to take all steps for amendment of the Recruitment ^{Rules} within a period of 90 days. As it appears, this


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order of this Tribunal has not been implemented by the Respondents in letter and spirit despite grant of additional time prayed for by them in MA and despite the fact that this order has not been reviewed/set aside meanwhile. Therefore, we are not convinced by any of the arguments advanced by the Respondents' contentions opposing the entitlement of the Applicant. Rather it is reiterated that paragraph 12 of the Resolution of the Government of India, Ministry of Finance (Department of Expenditure, New Delhi) dated 29th August, 2008 clearly provides that the Dynamic ACP Scheme for Doctors will be extended upto Senior Administrative Grade (grade pay of Rs.10000 in PB-4) for Medical Doctors having 20 years of regular service, or seven years of regular service in the non-functional selection grade of Rs.8700 grade pay in PB-4. Also, all the Medical Doctors, whether belonging to Organized Services, or holding isolated posts, will be covered by the DACP Scheme. As such, the consideration of the case of the applicant for grant of DACP should be as per the provisions made in paragraph 12 of the Resolution dated 29th

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August, 2008 which has not been done till date. Hence the Respondents shall have to consider the entitlement of the applicant as per the provisions made in paragraph 12 of the Resolution dated 29th August, 2008 and communicate its decision to the Applicant within a period of 45 days from the date of receipt of copy of this order.

13. With the aforesaid observation and direction this OA stands disposed of. There shall be no order as to costs.


(A.K.PATNAIK)
Member (Judl.)


(C.R.MOHAPATRA)
Member (Admn.)