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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. 138/2006.

Date of decision : 01.03.2007

C O R A M

Hon'ble Dr. K.B.S. Rajan, Judicial Member.

Hon'ble Mr. Tarsem Lal, Administrative Member.

Dr. Jagat Singh Bhati, S/o Late Shri Lt. Col. Dungar Singh Bhati aged about 58 years, resident of 151, Defence Lab Campus, Ratanada, Jodhpur (Rajasthan) Official Address: Chief Medical officer, Defence Laboratory, Jodhpur (Rajasthan).

: Applicant.

Rep. By Mr. Kamal Dave : Counsel for the applicant.

VERSUS

1. Union of India through the Secretary, Ministry of Defence (Medical Section) Government of India, Sena Bhawan, New Delhi.
2. Director General, Armed Forces Medical Services, (DG-2B), 'M' Block, New Delhi- 110 011

: Respondents.

Mr. M. Godhara proxy counsel for

Mr. Vinit Mathur : Counsel for the respondents.

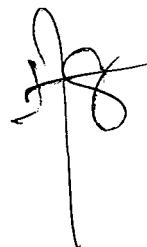
ORDER

Per Dr.K.B.S. Rajan, Judicial Member.

The applicant in this case has claimed the following reliefs:-

" (i) The respondents may kindly be directed to extend the benefit of office memorandum dated 06.06.2000, by which the percentage ceiling

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was raised from 15% to 30% by allowing grade of Rs. 14300-18300 to the applicant with effect from 06.06.2000 as per the above office memorandum with all consequential benefits.

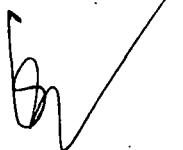
(ii) The respondents may kindly be directed to extend the benefit of Dynamic Assured Career Progression Scheme in furtherance of the order dated 05.04.2002 by allowing the applicant the pay scale of Rs. 14300-18300 as Chief Medical Officer (Non Functional Selection Grade) w.e.f. 05.04.2002.

(iii) The benefit of the Scheme referred above may be directed to be extended from 05.04.2002 and the respondents may further be directed to give all the consequential benefits including monetary benefits to the applicant with interest thereon at the rate of 12% per annum for intentional delay in allowing the due benefit of the scheme.

(iv) Exemplary costs may kindly be imposed on the respondents in view of the glaring facts and circumstances of the indecision in grant of benefits arising out the accepted recommendations of the Central Pay Commission.

(v) In the alternative, the respondents may kindly be directed to decide the representations in respect of the Dynamic Assured Career Progression Scheme and also in respect of increased ceiling from 15% to 30% within a period of two months from the date of order and if the same is allowed by the respondents the same may be ordered to be allowed with all consequential benefits with real monetary benefits and interest @ 12%.

(vi) Any other order or direction, which this Hon'ble Tribunal may deem




just and proper in the facts and circumstances of the case, may also be passed in favour of the applicant.

(vii) Costs may be awarded to the applicant.

2. Briefly stated, the applicant joined the services of the respondents in the year 1973 as Assistant Surgeon Gr. I. He was promoted as Senior Medical Officer with retrospective effect from 01.01.1987 in implementation of the order dated 10.11.1995 of the Mumbai Bench in O.A. No. 281/1991. The controversy before the Mumbai Bench for adjudication was by an Assistant Surgeon Gr.I over the denial of benefit of time bound promotion as extended to similarly situated doctors of the Central Health Services and other Central Government Civilian Doctors vide letter dated 14.11.1991. The Tribunal in that case has held that all these medical officers in various departments are in comparable posts and status and as such the benefit to any one of them shall percolated to the applicant as well. It was in pursuance of this order that the applicant was given higher promotion as Senior Medical Officer.

3. Vide Annexure A.2 order dated 06.06.2000, the Department of Personnel and Training had increased the percentage of ceiling in respect of Non Functional Selection Grade (NFSG, for short) pursuance to the recommendations of the 4th Central Pay Commission for all organised Group A

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Central Services. Accordingly the NFSG were formed to 30% of Senior Duty Posts i.e. all duty posts at the level of Senior Time scale and above in the cadre. This order dated 06.06.2000 has not been extended to the applicant's organization and as such he preferred representations. It has been informed to the applicant as early as on 23.11.2005 that the case for implementation of Dynamic Assured Career Progression Scheme for the Civilian Medical officers of DGAFMS is in progress with the Ministry of Defence since November 2002. It was stated therein that the promotion of Chief Medical Officer to the post of NFSG is a part of DACP and the office has been constantly pursuing the case with the Ministry of Defence. After the aforesaid communication dated 23.11.2005, there was no further progress.

The applicant thereafter sent a Legal Notice on 13.04.2006. This has also not been responded to. Hence this O.A seeking the relief as contained in para 1 above.

4. The respondents have resisted the O.A. Their contention has been that since the applicant does not belong to organized Group 'A' service, the benefit of order dated 06.06.2000 cannot be extended to him. The further fact such as the case having been referred to the Ministry of Defence as early as in 2002 etc. have not been refuted by the respondents.

5. The counsel for the applicant has stated that when the Mumbai Bench of this Tribunal has held that the posts of Medical Officers of DGAFMC was

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comparable to their counter parts in the Central Health Scheme and accordingly when the respondents have already implemented the order of the Mumbai Bench of this Tribunal, they cannot turn round to say that such further benefits available to the Central Health Service doctors cannot be extended to the DGAFMC. He has further stated that since the respondents have not communicated their decision they should be directed to apply their mind and come to a conscious decision in regard to the claim of the applicant.

6. Arguments were heard and documents were perused. The contention of the respondents in the counter is that the reason for not extending the benefit of the order dated 06.06.2000 is on account of the fact that the applicant do not belong to Organised Group A services. It is not exactly known as to whether any such decision has been taken by the Ministry of Defence. Even if such a decision is taken it cannot be, in our opinion, correct for the reason that the Apex Court in the case of **State of Mizoram v. Mizoram Eng. Service Assn., (2004) 6 SCC 218**, at page 223 have held as under:

“.....Apart from the reason of absence of recruitment rules for the Engineering Service, we see hardly any difference in organised and unorganised service so far as government service is concerned. In government service such a distinction does not appear to have any relevance. Civil service is not trade unionism. We fail to appreciate what is sought to be conveyed by use of the words “organised service” and “unorganised service”.

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As such, the counsel for the applicant has prayed for a direction to the respondents to decide the representation of the applicant and communicate the decision of the Ministry of Defence in the matter which is pending since 2002. He also prayed for a calendaring schedule in this regard as the applicant is due for superannuation shortly i.e. in January 2008. It is needless to mention here that if the respondents arrive at a conclusion to extend the benefits of order dated 06.06.2000 to officers of DGAFMC, the same shall be made applicable to all the persons similarly situated like the applicant in view of the recommendations of the 5th Pay Commission at para 126.5 which reads as under:-

"126.5 – Extending judicial decisions in matters of a general nature to all similarly placed employees. - We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of Central Administrative Tribunal, Bangalore in the case of C.S. Elias Ahmed and others v. UOI & others (O.A. Nos. 451 and 541 of 1991), wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like G.C. Ghosh v. UOI, [(1992) 19 ATC 94 (SC)], dated 20-7-1998; K.I. Shepherd v. UOI [(JT 1987 (3) SC 600)]; Abid Hussain v. UOI [(JT 1987 (1) SC 147)], etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing the other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature



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applicable to a group or category of Government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee."

7. This O.A is disposed of with a direction to respondent No.1 to arrive at a judicious decision keeping in view the clear observations made by the Apex Court in the case of **State of Mizoram v. Mizoram Eng. Service Assn.** (supra), within a period of three months from the date of communication of this order. No costs.

Tarsem Lal

(Tarsem Lal)
Administrative Member


(Dr. K.B.S. Rajan)
Judicial Member.

