

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**ORIGINAL APPLICATION NO. 180/2008**

**Date of Order:** 26-7-2010

**CORAM:**

**HON'BLE MR. JUSTICE SYED MD. MAHFOOZ ALAM, JUDICIAL MEMBER  
HON'BLE MR. V.K. KAPOOR, ADMINISTRATIVE MEMBER.**

Dr. Jagat Singh Bhati S/o Late Shri Lt. Col. Dungar Singh Bhati, aged about 60 years, resident of 151, Defence Lab Campus, Ratanada, Jodhpur (Rajasthan). – Official Address: Retired Chief Medical Officer, Defence Laboratory, Jodhpur (Rajasthan).

**.... Applicant.**

Mr. Kamal Dave, counsel for applicant.

**VERSUS**

1. The Union of India through the Secretary, Ministry of Defence (D-Medical Section), Government of India, Sena Bhawan, New Delhi.
2. Director General, Armed Forces Medical Services (DG-2B), 'M' Block, New Delhi – 110011.

**.... Respondents.**

Mr. Kuldeep Mathur, counsel for respondents.

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**(Per Mr. V.K. Kapoor, Administrative Member)**

Dr. Jagat Singh Bhati has preferred the present O.A. in which the following reliefs are sought for:

- "(i) That the order impugned Annexure A/1 dated 24-12-2007 may kindly be quashed and set aside.
- (ii) The respondents may kindly be directed to extend the benefit of office memorandum dated 06.06.2000, by which the percentage ceiling was raised from 15% to 30% by allowing grade of Rs. 14300-18300 to the applicant w.e.f. 06.06.2000 as per the above office memorandum with all consequential benefits.
- (iii). 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 applicant the pay scale of Rs. 14300-18300 as Chief Medical Officer (Non Functional Selection Grade) w.e.f. 05.04.2002.

*C. V. Kapoor*

(iv). The benefit of the Scheme referred above may directed to be extended from 05.04.2002 and the respondents may further be directed to given 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.

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

(vi). 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%.

(vii) 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 applicant.

(viii) Costs may also be awarded to the applicant."

2. The brief facts of the case are that applicant previously approached the C.A.T., Jodhpur Bench by filing O.A. 138/2006 wherein vide judgment dated 01.3.2007, the respondent-1 was directed to arrive at a judicious decision keeping in view clear observations made by apex court in the case of State of Mizoram vs. Mizoram Engineering Service Association. The respondent-2 opined that the question raised is to be reserved for consideration by the 6<sup>th</sup> Central Pay Commission (CPC) vide order dated 24.12.2007 (ann A-1). As respondents did not comply with the verdict of CAT, Jodhpur, C.P. 35/2007 was filed by the applicant. The applicant entered into the respondent-department after being selected by the Union Public Service Commission as Assistant Surgeon Grade-I w.e.f. 25.08.1973. The applicant was accorded promotion quite late from 01.01.1987 as Senior Medical Officer in the light of judgment dated 10.11.1995 by C.A.T. Mumbai Bench in O.A. 281/1991. Thus, the applicant was able to get benefit of time bound promotion scheme which was made applicable for

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other cadres of the civilian doctors of Central Government (ann A-3). The Department of Personnel & Training, Government of India vide office memorandum dated 06.6.2000 increased the ceiling percentage in respect of Non-Functional Selection Grade (N.F.S.G.) pursuant to recommendations of the 4<sup>th</sup> Central Pay Commission (CPC). As per said memorandum, the posts in the N.F.S.G. were formed to 30% of the senior duty posts, pay scale of Rs. 14300-18300 from 06.6.2000 was given to the applicant (ann A-4). The Govt. of India, Ministry of Health and Family Welfare vide order dated 05.4.2002 communicated Dynamic Assured Career Progression Scheme (D.A.C.P. Scheme) for officers of Central Health Services as per recommendations of the 5<sup>th</sup> CPC. Accordingly, the Senior Medical Officer grade was to be Rs. 10000-15200 on completion of 4 years of regular service and after completion of 5 years of service to be promoted on the post of Chief Medical Officer grade 12000-16500 and so on. As per D.A.C.P. scheme, applicant is entitled to get benefits from 05.4.2002 in NFSG in the grade of Rs. 14300-18300. The applicant represented many a times in regard to discrimination compared to Central Govt. / Civilian Medical Officers. The matter was kept pending on the outcome of 6<sup>th</sup> CPC recommendation. The applicant has prayed for extending the benefits of office memorandum dated 06.6.2000 by which percentage ceiling was raised from 15% to 30% by allowing grade of Rs. 14300-18300 to the applicant. He also requested to set aside the order dated 24.12.2007 (ann A-1).



3 (a). The respondents in reply have narrated that applicant was holding of the post of Chief Medical Officer in Defence Laboratory, Jodhpur in administrative control of Director General of Armed Forces Medical Services (DGAFMS), Ministry of Defence. The pay scale of Chief Medical Officer is Rs. 12000-16500, Sr. Medical Officer is Rs. 10000-15200 & Civilian Medical Officer is Rs. 8000-13500. The 5<sup>th</sup> CPC recommended for creating a unified central health service and further that unorganized services should be integrated. The 5<sup>th</sup> CPC also recommended a D.A.C.P. Scheme for the above cadre. Hence, the benefit of D.A.C.P. was not available to the Medical Officers of CMO cadre under DGAFMS. The applicant submitted representation to DGAFMS and later filed O.A. 138/2006 before CAT, Jodhpur. The CAT Jodhpur gave order in the light of observations made by apex court in the case of State of Mizoram vs. Mizoram Engineering Service Association wherein distinction between organized and unorganized service is questioned. After constitution of 6<sup>th</sup> CPC, the matter was recommended for grant of DACP scheme of CMOs under DGAFMS to bring them at par with CHS Doctors. The N.F.S.G. grade of Rs. 14300-18300 (5<sup>th</sup> CPC) is available only to the recognized group 'A' service and the cadre of Civilian Medical Officer and Chief Medical Officer under DGAFMS is not a organized group. The 6<sup>th</sup> CPC recommended that DACP scheme for different streams of doctors should be extended to all doctors to bring them at par working under Central Health Scheme (C.H.S.).

3 (b). The applicant in rejoinder has prayed for allowing the benefit of DACP scheme in application of order dated 05.4.2002

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and extending the benefit of office memorandum dated 06.6.2000. The C.A.T., Mumbai Bench ordered for extending the benefit of judgment to all similarly placed employees, the extension of benefit of DACP on equality basis and treating all said doctors equivalent. The difference treated amongst doctors belonging to unorganized services or holding isolated posts stands eliminated.

4(a). Learned counsel for applicant in arguments has referred to O.A. 138/2006 (CAT Jodhpur) in decision dated 01.03.2007, directions were given to respondent-1 to arrive at a judicious decisions keeping in view the clear observations made by apex court in the case of State of Mizoram vs. Mizoram Engineering Service Association that speaks of giving equivalence to all concerned doctors whether in organized or unorganized sector, this judgment relates to all doctors for at par with other similarly situated doctors. As per DACP scheme, enhancement of ceiling was made from 15% to 30%. The applicant was entitled for accrued benefits. The civilian doctors working in the defence wing were treated differently. The CAT, Mumbai Bench gave direction to respondents to treat all the medical officers on equivalence basis. The DACP scheme was being denied, the order was passed to bring parity to the concerned doctors i.e. Civilian and Army doctors. The matter was referred to 5<sup>th</sup> CPC that recommended parity and equality to similarly situated persons. The order given by CAT Mumbai Bench is final and clearly allows the said doctors to be treated on equal footing. Later CAT, Madras Bench gave direction to give benefit to all similarly situated persons.

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Subsequently, the recommendations of 6<sup>th</sup> CPC came into operation. Actually, no distinction need be made between the organized and unorganized doctors and benefit be extended to all similarly situated persons. The recommendations of 6<sup>th</sup> CPC were accepted and intimated. The letter/communication relating to NFSG dated 23.11.2005 (ann A-6) speaks of pursuing the matter on the side of respondents. Now new contentions cannot be raised, applicant and similarly situated persons are to be given relief as per direction given by the CAT, Mumbai Bench and later CAT, Madras Bench. The applicant's counsel has filed written arguments, besides relevant documents in support of his contention. The applicant has also submitted decision dated 26.9.2008 of CAT Jodhpur Bench in OA 80/2008.



4 (b). Learned counsel for respondents in arguments stated that the recommendations of 5<sup>th</sup> CPC are not binding on Government, applicant wants benefit of higher scale in the light of recommendations of 5<sup>th</sup> CPC, such benefit cannot be given retrospectively. There are time bound promotion, the controversy has arisen before the fact that the ministry of defence has given advantage of DACP scheme to the army doctors. The applicant is in the service of CHS and working under DGAFMS. There were recommendations for unified/integrated CHS, it was referred to Ministry of Health & Family Welfare. The applicant cannot be given the advantages of 6<sup>th</sup> CPC from retrospective effect, these are not open to judicial review as per verdict of apex court in 2007 (7) SCC 472. The Ministry of Defence have not passed order in the light of recommendations for giving equivalence to

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applicant & similarly situated doctors with army doctors in 2002, the scheme/policy was not operative so advantage/benefit cannot be given from retrospective effect.

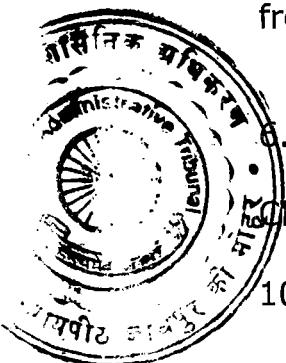
5. The applicant joined the service under respondent-department in 1973 as Assistant Surgeon grade-I. Later promoted as Senior Medical Officer w.e.f. 01.01.1987. The promotion was given retrospectively to the applicant in the light of order dated 10.11.1995 of CAT Mumbai Bench in OA 281/1991. The disputes before CAT Mumbai Bench were in regard to denial of time bound promotion as extended to similarly situated doctors of CHS and civilian doctors of the Central Government. There are certain civilian doctors working under DGAFMS who have been denied equivalence with the doctors working under the defence services, main reason ascribed is that the applicant come from unorganized sector, therefore, he was not given equivalent pay scale. Here the verdict of apex court in the case of **State of Mizoram and anr. vs. Mizoram Engineering Service Association and anr.** - (2004) 6 SCC 218 - is the cardinal guideline that reads as follows:

"C. Service Law - Pay - Parity - Chief Engineer / Addl. Chief Engineer of Mizoram Engineering Service - Pay scale allowed by Govt. of India for senior-level posts in corresponding cadres cannot be denied to Chief Engineer / Addl. Chief Engineers of the State Engineering Service on ground that Engineering Service in the State was not an organised service merely because of absence of recruitment rules for the Service - Members of the Service being not responsible for not framing the rules, they cannot be made to suffer for failure of the State to frame the rules - Constitution of India, Art. 309."

In the present case, the civilian doctors working under the respondent-department were being treated different and the actual benefits and pay perks were being given to the doctors

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working under the DGAFMS. The DOPT raised percentage ceiling in respect of NFSG to Group 'A' Central Service from 15% to 30% with effect from 06.6.2000. The applicant was serving as senior medical officer being eligible and entitled for grant of DACP scale operative from 05.04.2002. But he denied this scale and was discriminated from the doctors working under DGAFMS. Then after the scheme of DACP was introduced vide order dated 05.4.2002, which is applicant's main demand/prayer. With regard to office memorandum dated 06.6.2000, many representations were moved by the applicant to allow him the benefits accrued out of this scheme. But these representations were not given effect to even though there were favourable recommendations from 5<sup>th</sup> and 6<sup>th</sup> CPC.



The CMO cadre of DGAFMS consists of in the pay scale of Chief Medical Officer Rs. 12000-16500, Sr. Medical Officer Rs. 10000-15200 and Civilian Medical Officer Rs. 8000-13500, respectively. The 5<sup>th</sup> CPC made recommendation to create a unified Health Service comprising of Central Health Service, Indian Railways Medical Service and Indian Ordnance Factories Health Service. The recommendations made were that the posts outside the organized service excluding Armed Forces Medical Personnel should be integrated with the Central Health Service. The 5<sup>th</sup> CPC recommended a DACP scheme for the above services for which applicant has craved for from 05.4.2002. Later, similar matters including that of applicant were sent to the 6<sup>th</sup> CPC but the discriminatory effect still persists. The case of State of



Mizoram (supra) is quite specific as regards avoidance of discriminatory tactics. It's relevant part reads as follows:

"D. Service Law – Government service – Absence of recruitment rules – Effect – Service cannot be termed as unorganised merely because of absence of recruitment rules for the Service when apart from that there is no other difference between the organised and unorganised service so far as govt. service is concerned – In govt. service such distinction does not have any relevance – Civil service is not trade unionism – Constitution of India, Art. 309."

As discussed earlier, the 5<sup>th</sup> CPC made recommendation to create a unified Health Service comprising of Central Health Service, Indian Railways Medical Service and Indian Ordnance Factories Health Service so as to give them pay parity and equivalence. It cannot be said that because of the applicant does not come from the organised service, pay equivalence be withdrawn from him. The 5<sup>th</sup> CPC recommended that DACP scheme for different stream of doctors should be extended to all medical officers including those working in the isolated posts. The promotion of Chief Medical Officer to Non-Functional Selection Grade is the part of DACP and the matter was being pursued with defence ministry till 23.11.2005. On 24.12.2007, the order was passed in compliance with the directions of CAT, Jodhpur Bench in OA 138/2006 in which implementation of CAT directive dated 01.03.2007 was not carried out and the matter referred to 6<sup>th</sup> CPC. Similar situation arises out of residential telephone given vide communication dated 16.01.2006. The apex court has discarded the earlier discriminatory and dilatory tactics in case of doctors / medical officers employed in various Govt. organisations. Thus, benefit given to any of the category should be equally treated. The idea of unified / integrated type of

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medical service was also moved which reflects upon equivalence of doctors working in various Govt. organisations including defence.

7. The distinction should not be allowed to persist on the basis of organised / unorganised service as per judgment of the apex court in State of Mizoram (supra). The respondents have relied upon the citation of Union of India vs. Arun Jyoti Kundu and ors. 2007 (7) SCC 472 as regards pay parity which need not be given a retrospective effect and that the recommendation of pay revision commission are subject to acceptance all objective raised by the applicant, these pay scales are not open to judicial review. This narrative is to be accepted on the face of it as per directions of the apex court but the apex court has similarly stressed on avoidance discrimination in matters of promotion and pay scales on equal footing as mentioned in State of Mizoram (supra). Therefore, the pay equivalence on equal qualification and in different sector whether organised or unorganised are to be given similar treatment as per the decision of CAT, Calcutta in O.A. 871/2006 - Mrinal Kanti Sarkar vs. UOI & Ors. - in which vide order dated 06.3.2008, the respondents were directed to grant the similar benefit of higher pay scale to applicants. Similar is the case of Rajendra Gehlot & Anr. vs. Union of India & Ors. in CAT, Jodhpur - OA 80/2008, vide order dated 26.9.2008 that was mainly based on the above sated case of Mrinal Kanti Sarkar. Thus, the decision given by CAT, Bombay Bench in OA 281/1991 on 10.11.1995 is to be accepted and got implemented in letter & spirit. As per this verdict of Tribunal, Bombay Bench, we should

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be satisfied with the applicant doctor is not to be discriminated from doctor working under the respondent-organisation. Therefore, the applicant is entitled for pay parity similar to civilian doctors of Indian Railway Medical Service and Indian Ordnance Factories Health Service and respondent-organisation like DGAfMS.

8. In the light of observations made above, the respondent-department are directed to grant similar benefit of higher pay to the applicant as per office memorandum dated 06.6.2000 by

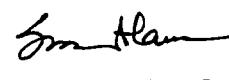
which percentage ceiling was raised from 15% to 30% by allowing grade of Rs. 14300-18300 to the applicant w.e.f. 06.6.2000.

Similarly, the respondent-organisation should also consider the request of extending of the benefit of Dynamic Assured Career Progression Scheme in furtherance of the order dated 05.4.2002

by allowing the applicant the pay scale of Rs. 14300-18300 as Chief Medical Officer (Non Functional Selection Grade) w.e.f.

05.4.2002. The respondents are directed to comply with the aforesaid direction within a period of six months from the date of receipt of copy of this order. With these observations, this O.A. is disposed of.

  
[V.K. Kapoor]  
Administrative Member

  
[Justice S.M.M. Alam]  
Judicial Member