

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 296/2012

ORDER RESERVED ON: 08.01.2015

DATE OF ORDER: 25.2.2015

CORAM

HON'BLE MR. B.V. RAO, JUDICIAL MEMBER

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Dr. S.C. Bansal S/o Shri T.S. Gupta, aged about 57 years, R/o A-97, Chandra Vardai Nagar, Ajmer and presently working as Senior Medical Officer, Railway Hospital, Ajmer.

...Applicant

Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through General Manager, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur.
2. Railway Board through its Secretary, Ministry of Railways, Rail Bhawan, New Delhi.

...Respondents

Mr. Anupam Agarwal, counsel for respondents.

ORDER

(per Mr. Anil Kumar, Administrative Member)

The applicant has filed the present Original Application praying for the following reliefs:

- "(i). That respondents be directed to allow grade pay Rs. 10,000 w.e.f. 17/03/2009 as per provisions of DACP scheme as allowed to his juniors with all consequential benefits by quashing letter dated 28/03/2012 (Annexure-A/1) quo-applicant.
- (ii) The respondents be further directed to place the applicant at par with his juniors as regards to pay & allowances and senior etc. with all consequential benefits.
- (iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the costs of this application may be awarded"

Anil Kumar

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was initially appointed as Assistant Medical Officer on ad hoc basis on 08.01.1979 and his services were regularized as Assistant Divisional Medical Officer w.e.f. 17.03.1989. Subsequently, the applicant became Divisional Medical Officer on 17.03.1993 and thereafter Senior Divisional Officer on 17.03.1999. The applicant was allowed selection grade w.e.f. 18.07.2007 in PB-4 Rs. 37,400-67-000 with Grade Pay of Rs. 8700 vide order dated 07.08.2007 (Annexure A/3).

3. He further submitted that Sixth Central Pay Commission recommended Dynamic Assured Career Progression Scheme (DACP Scheme) for doctors for placement in higher scale after completion of requisite service in the lower pay band and Railway Board also extended the benefits to the doctors working in Railways vide order dated 07.01.2009 (Annexure A/4), which provides grade pay Rs. 10,000 on seven years service in grade pay Rs. 8,700 in PB-4 including service rendered in pre-revised scale of Rs. 14,300-18,300 OR 20 years of regular service. The Railway Board further clarified the provisions of the scheme vide order dated 24.08.2009 (Annexure A/5) and the same also provides 20 years of regular service for allowing grade pay of Rs. 10,000.

Anil Kumar

4. He also submitted that Railway Board as per provisions of the scheme allowed SAG Grade to certain Medical Officer i.e. 507 vide order dated 14.10.2009 (Annexure A/6), in which from serial No. 347 all the Medical Officers are junior to the applicant and applicant without any base left over from the benefits of grade pay of Rs. 10,000 in spite of fact that applicant completed 20 years regular service on 17.03.2009 excluding ad hoc service. In the order dated 14.10.2009 some Medical Officers allowed grade pay of Rs. 10,000 after the effective date i.e. 07.01.2009, so Railway Board vide order dated 18.02.2010 allowed the benefits w.e.f. 07.01.2009 to 273 Medical Officers out of 507 Medical Officers. Railway Board issued further order dated 18.02.2010 (Annexure A/7) and allowed grade pay of Rs. 10,000 to other Medical Officers those also junior to the applicant.

5. Learned counsel for the applicant submitted that the applicant represented before the respondents on 22.09.2011 (Annexure A/8) and further on 24.01.2012 (Annexure A/2) stating therein that applicant completed 20 years of regular service on 17.03.2009 and is entitled for grade pay of Rs. 10,000 in PB-4 and without any base not allowed the same, in spite of the fact that applicant is entitled as per provisions of the scheme, which is evident from Annexure A/4 and A/5.

Anil Kumar

6. He further submitted that the applicant is at verge of retirement on 31.01.2014 and juniors to the applicant are drawing higher pay and by inaction of the respondents, applicant is in receipt of less pay & allowances than the juniors and also in receipt of retirement benefits at the time of retirement. The respondents vide letter dated 28.03.2012 (Annexure A/1) rejected the claim of the applicant on the ground that applicant not completed seven years service in selection grade without due consideration of 20 years regular service as per schemes which provide grade pay Rs. 10,000 on seven years service in grade pay Rs. 8,700 in PB-4 including service rendered in pre-revised scale of Rs. 14,300-18300 OR 20 years of regular service. Besides this, respondents allowed SAG grade to Dr. S.C. Gupta and Smt. Neeraj Verma on the basis of 20 years regular service, as they were also allowed selection grade in the year 2006 & 2008 and matter of the applicant not considered on same footing.

7. Learned counsel for the applicant submitted that the action of the respondents in not allowing the grade pay of Rs. 10,000 to the applicant in spite of the fact that he has completed 20 years of service is against the rules and regulations and, therefore, it is not only unjustified but also illegal. Therefore, the respondents be directed to allow grade pay of Rs. 10,000 to the applicant w.e.f. 17.03.2009

Anil Kumar

as per provisions of DACP Scheme as allowed to his juniors with all consequential benefits.

8. On the contrary, the respondents have filed their written reply. In the written reply, the respondents have taken a preliminary objection with regard to the limitation. They have stated that the cause of action, if any, to the applicant arose at a time when the order dated 14.10.2009 was issued when the persons allegedly juniors to him were granted SAG Grade under the DACP Scheme. The applicant preferred the representation on 22.09.2011 (Annexure A/8) i.e. after the expiry of limitation period prescribed under the Act of 1985. Merely because it was denied vide order dated 28.03.2012 (Annexure A/1) did not give cause of action to the applicant, therefore, the Original Application is barred by limitation.

9. The Ministry of Railway introduced the Scheme namely Dynamic Assured Career Progression Scheme (DACP Scheme) vide Office Order dated 07.01.2009 (Annexure A/4). In this order, it is stipulated in para 2 that for up-gradation from Grade Pay Rs. 8700 in Pay Band 4 (Selection Grade) to Grade Pay Rs. 10000 in Pay Band 4 (SAG), seven years in grade pay of Rs. 8700 (SG) in pay band 4 including service rendered in the pre-revised scale



of Rs. 14300-18300 (SG) or 20 years of regular service will be required for said up-gradation.

10. In the reply, it is further submitted by the respondents that later on, M/o Health and Family Welfare vide their OM dated 21.07.2009 have issued certain clarification in consultation with Department of Expenditure under the M/o Finance on DACP Scheme. In pursuance to this, M/o Railway have also issued their office order No. PC-VI/2008/ACP/2 dated 24.08.2009. In this letter, it has been clarified that it was not the intention of the letter dated 07.01.2009 to straightway grant SAG (Grade Pay of Rs. 10000/ in pay band 4) to an individual on mere completion of 20 years service even if he was still a Junior Scale or Senior Scale Medical Officer or JAG or Sr. Grade Medical Officer. In fact, for being eligible for upgradation under DACP Scheme, a doctor has to render minimum qualifying service in the immediate lower grade as prescribed in the letter dated 07.01.2009. Therefore, the question of direct promotion under DACP to SAG from the grade pay of Rs. 5400, 6600 and 7600 in the pay band-III does not arise. However, in the letter dated 24.08.2009 in Para 4, it has been stipulated that at the time of initial implementation of the DACP scheme for doctors, a doctor with more than 20 years of regular service and already regularly promoted as CMO/SG (Grade Pay of Rs. 8700 in

Anil Sharma

the pay band 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 4 without rendering full seven years of service in the NFSG grade. In para 5 of this letter dated 24.08.2009, it is clearly stated that having been granted financial upgradation under DACP in the above manner at the time of initial implementation of the scheme, thereafter, the doctors would have to earn their next upgradation under DACP scheme as per the eligibility of service prescribed in the letter dated 07.01.2009.

11. The date of appointment of applicant as ADMO is 07.03.1989. He was placed in selection grade on 18.07.2007. As, he had not completed seven years service in selection grade, he is not eligible for promotion to SAG as on 07.01.2009. He will be eligible for consideration for SAG on or after completion of seven years service in selection grade in terms of Railway Board's letter dated 07.01.2009 read with Railway Board's letter dated 24.08.2009. The applicant was not considered as he had not completed 20 years service as on 07.01.2009 i.e. at the time of initial implementation of the scheme. Now, he will be eligible for consideration for SAG after completion of seven years service in selection grade.

Anil Kumar

12. In reply to the case of Dr. S.C. Gupta and Dr. Neeraj Verma, as referred to by the applicant in the OA, the respondents have stated that the date of appointment of Dr. S. C. Gupta is 27.09.1984 and the date of appointment of Dr. Neeraj Verma is 15.07.1987, thus, they had completed the requisite 20 years of service as on 07.01.2009, whereas the date of initial appointment of the applicant is 17.03.1989, thus, the applicant cannot compare his case with that of Dr. S.C. Gupta and Dr. Neeraj Verma. Thus, there is no discrimination against the applicant. Therefore, the action of the respondents in rejecting the representation of the applicant for grant of grade pay of Rs. 10000 under DACP scheme w.e.f. 17.03.2009 is according to the provisions of law and the O.A. has no merit and it should be dismissed with costs.

13. Heard the learned counsel for the parties and perused the documents available on record.

14. With regard to the preliminary objection of the respondents regarding limitation, we are of the view that wrong fixation of pay is a recurring cause of action. His representation has been rejected by the respondents on 28.03.2012. Moreover, the Hon'ble Supreme Court in the case of **M.R. Gupta vs. Union of India and Others** reported in 1995 SCC (L&S) 1273 has held that a

Anil Kumar

continuing wrong giving rise to a recurring cause of action every month on the occasion of payment of salary and have held as not time barred; although the applicant's claim to consequential arrears would be subject to the law of limitation. Therefore, in view of the facts of the present case, we do not find that the present O.A. is hit by limitation.

15. On the merits of the case, the learned counsel for the applicant submitted that since the applicant was initially appointed on 08.01.1979, therefore, the applicant completed more than 20 years of service as on 07.01.2009 i.e. the date of the implementation of Dynamic Assured Career Progression Scheme (DACP Scheme) for the officers of the Indian Railway Medical Service. He further submitted that as per the provisions of the scheme since he has completed 20 years of service and was already getting the grade pay of Rs. 8700 in pay band-4, therefore, he was entitled for the grade pay of Rs. 10,000 in pay band-4. He further argued that even if his date of appointment is regarded as 17.03.1989 then also since he completed 20 years of service on 17.03.2009 and, therefore, he is entitled for the grade pay of Rs. 10,000 in pay band-4 w.e.f. 17.03.2009. He further argued that the clarification issued by the respondents on 24.08.2009 (Annexure A/5) also entitles the applicant for the grade pay of Rs. 10,000 on

Anil Kumar

completion of 20 years of service without rendering full 7 years of service in the NFSG grade. He drew our attention to para 4 (c) of the letter dated 24.08.2009 (Annexure A/5), which is quoted below: -

"4(c). 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-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-4 without rendering full 7 years of service in the NFSG grade. "

16. On the contrary, learned counsel for the respondents argued that the applicant was regularly appointed as Assistant Divisional Medical Officer w.e.f. 17.03.1989. He submitted that even in the representation submitted by the applicant to the Secretary, Railway Board, New Delhi on 24.01.2012 (Annexure A/2), the applicant in para 2 of the representation has himself stated that he has completed 20 years of regular service on 15.03.2009. Learned counsel for the respondents further drew our attention to the last para of this representation in which the applicant has requested for sanction of SAG grade in the grade pay of Rs. 10000 in PB-4 w.e.f. the date of completion of 20 years of service i.e. 15.03.2009.

17. Learned counsel for the respondents further argued that even in para 8 (i) of the OA under the heading Relief Sought, the applicant has prayed for allowing grade pay of Rs. 10000 w.e.f. 17.03.2009 as per provisions of DACP

Anil Kumar

scheme. Thus, the applicant himself has admitted that he is a regular employee w.e.f. 17.03.1989 and, therefore, his services rendered prior to 17.03.1989 cannot be counted for the purpose of sanction the benefit of DACP Scheme.

18. He also argued that as per para 2 of the DACP scheme RBE No. 05/2009 dated 07.01.2009 (Annexure A/4), the following provision has been made for grant of grade pay of Rs. 10,000 in Pay Band-4: -

"2. The number of years of regular service required for upgradation to various grades upto SAG Level under the DACP Scheme will be as under: -

Promotions under DACP Scheme		No. of years of regular service required for promotion
From	To	
xxx	xxx	Xxx
xxx	xxx	Xxx
xxx	xxx	Xxx
Grade Pay Rs. 8700 in PB-4	Grade Pay Rs. 10000 in PB-4	7 years in Grade Pay of Rs. 8700 in PB-4 including service rendered in the pre-revised scale of Rs. 14300-18300 or 20 years of regular service.

19. Learned counsel for the respondents argued that subsequently, the Railway Board vide RBE No. 148/2009 dated 24.08.2009 (Annexure A/5) issued certain clarifications and he drew our attention to para 4 (c) and para 5 of the said circular, which are quoted below: -

"4(c). 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-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-4

Anil Kumar

without rendering full 7 years of service in the NFSG grade.

5. Having been granted financial upgradation under DACP in above manner at the time of initial implementation of the Scheme, thereafter, the Doctors would have to earn their next upgradation under DACP Scheme as per the eligibility of service prescribed in the letter of even number, dated 07.01.2009"

He argued that a bare perusal of the said Paras would show that grant of grade pay of Rs. 10000 in PB-4 to those Medical Officers who were already in the grade pay of Rs. 8700 in the pay band-4 without rendering full 7 years of service in the NFSG grade was one time exception. Thus, those Medical Officers who were in the grade pay of Rs. 8700 in the Pay Band-4 at the time of introduction of Dynamic Assured Career Progression Scheme as on 07.01.2009 had completed 20 years of regular service but were short of 7 years in that grade of pay of Rs. 8700 were allowed upgradation. Thereafter, the Doctors have to fulfill criteria of eligibility of service for upgradation under DACP as prescribed in the RBE No. 05/2009 dated 07.01.2009 (Annexure A/4). In the case of the applicant, since he was the appointee of 17.03.1989, therefore, as on 07.01.2009, he did not compete 20 years of regular service and, hence, he was not given upgradation under DACP Scheme in the grade pay of Rs. 10,000 in Pay Band-4; though at that point of time, he was in the grade pay of Rs. 8700 in Pay Band-4. Thus, the decision of the respondents on his

Anil Kumar

representation dated 28.03.2012 (Annexure A/1) is according to the provisions of the Scheme of DACP.

20. Having heard the rival submissions of the parties, it is clear that the applicant was regularly appointed in the Medical Service of the respondent-department w.e.f. 17.03.1989. The applicant himself in his representation dated 24.01.2012 (Annexure A/2) has stated that he completed 20 years of regular service on 15.03.2009. Even in the last para of the representation, the applicant has prayed for grant of promotion from Grade Pay Rs. 8700 in PB-4 (selection Grade) to Grade Pay Rs. 10000 in PB-4 (SA Grade) w.e.f. the date of completion of 20 years of service i.e. 15.03.2009 as per Railway Board letter (RBE No. 05/2009) dated 07.01.2009 read with letter (RBE No. 148/2009) dated 24.08.2009. Therefore, the prayer of the learned counsel for the applicant that the applicant be treated as an appointee of 08.01.1979 cannot be conceded.

21. Now we would examine that if the applicant is an appointee of 17.03.1989 and was working in the grade pay of Rs. 8700 in PB-4 at the time of the introduction of the scheme of DACP vide letter dated 07.01.2009, whether the applicant was entitled for grant of grade pay of Rs. 10,000/- in PB-4 without completing full 07 years of service in the grade pay of Rs. 8700 in PB-4. From the perusal of

Anil Kumar

the Scheme dated 07.01.2009, it is clear that there were two conditions for grant of grade pay of Rs. 10,000 in PB-4 i.e. (i) that the employee should have completed 07 years in Grade Pay of Rs. 8700 in PB-4 OR (ii) 20 years of regular service. It is not disputed that the applicant was placed in the selection grade w.e.f. 18.07.2007 i.e. Grade Pay of Rs. 8700 in PB-4. Thus, the applicant did not complete 7 years as on 07.01.2009 in the Grade Pay of Rs. 8700 in PB-4 as per the provisions of DACP Scheme. Therefore, on this ground, he is not entitled for Grade Pay of Rs. 10,000 in PB-4 w.e.f. 07.01.2009. Similarly, he did not complete 20 years of regular service as on 07.01.2009. Therefore, even on this account, the applicant is not entitled for Grade Pay of Rs. 10,000 in PB-4 w.e.f. 07.01.2009.

22. The applicant in the OA has prayed that he should be sanctioned grade pay of Rs. 10000 in PB-4 w.e.f. 17.03.2009 as per the provisions of DACP i.e. the date when he completed 20 years of service. In support of his arguments, learned counsel for the applicant drew our attention to para 4 (c) of circular of the Railway Board RBE No. 148/2009 dated 24.08.2009 (Annexure A/5), which has been quoted earlier in para 15 and para 19 of this order. However, learned counsel for the respondents drew our attention to para 5 of the same circular RBE No. 148/2009

Anil Kumar

dated 24.08.2009, which has also been quoted earlier in para 19 of this order.

23. We have carefully perused the provision of para 4 (c) and para 5 of circular RBE No. 148/2009 dated 24.08.2009 (Annexure A/5), which is a clarification of the earlier circular of the Railway Board RBE No. 05/2009 dated 07.01.2009 (Annexure A/4). From the perusal of para 4 (c) & para 5 of the circular RBE No. 148/2009 dated 24.08.2009, it is clear that the respondent-department made one time exception for grant of grade pay of Rs. 10,000 in Pay Band-4 without rendering full 7 years of service in the NFSG Grade. Para 5 of the circular RBE No. 148/2009 dated 24.08.2009 clearly states that having been granted financial up-gradation under DACP in the above manner at the time of initial implementation of the Scheme, thereafter, the Doctors would have to earn their next up-gradation under DACP Scheme as per the eligibility of service prescribed in the letter of even number dated 07.01.2009 (Annexure A/4) i.e. for getting Grade Pay of Rs. 10000 in PB-4 from the Grade Pay of Rs. 8700 in PB-4, a Doctor is required 07 years of regular service in the Grade Pay of Rs. 8700 in PB-4. Therefore, we are inclined to agree with the arguments of the learned counsel for the respondents that the provisions of para 4 (c) of the circular RBE No. 148/2009 dated 24.08.2009 were one time

Anil Kumar

exception and since the applicant did not complete 20 years of regular service as on 07.01.2009, therefore, he was not entitled for this one time exception. Subsequently, all the Doctors who were not entitled for one time exception are required to complete the eligibility of service as prescribed in the letter dated 07.01.2009 (Annexure A/4). Since, the applicant was given the selection grade i.e. Grade Pay of Rs. 8700 in PB-4 w.e.f. 18.07.2007, therefore, the applicant would be entitled for upgradation in SAG Grade (Grade Pay of Rs. 10000 in PB-4) w.e.f. 18.07.2014 i.e. after completion of full 7 years of service in the NFSG Grade pay structure of Grade Pay of Rs. 8700 in PB-4.

24. With regard to the arguments of the learned counsel for the applicant that Dr. S.C. Gupta and Dr. Neeraj Verma have been given the up-gradation in the Grade Pay of Rs. 10000 in PB-4 under similar circumstances whereas the applicant has been denied the same benefit, therefore, the applicant has been discriminated by the respondents, it was argued by the learned counsel for the respondents that Dr. S.C. Gupta was appointed 27.09.1984 and Dr. Neeraj Verma was appointed on 15.07.1987. Thus, they had completed the requisite 20 years of regular service as on 07.01.2009 whereas the applicant was appointed on 17.03.1989, therefore, the applicant cannot compare his claim with Dr. S.C. Gupta and Dr. Neeraj Verma, therefore,



there is no discrimination against the applicant nor there is any violation of Article 14, 16, 21 and 39 (d) of the Constitution of India. This fact that Dr. S.C. Gupta and Dr. Neeraj Verma were appointed on 27.09.1984 and 15.07.1987, respectively, has not been rebutted/disputed by the learned counsel for the applicant. Therefore, it cannot be said that the applicant has been discriminated vis-à-vis Dr. S.C. Gupta and Dr. Neeraj Verma being similarly situated. Thus, there is no force in the contention of the learned counsel for the applicant on this ground also.

25. Thus, in view of the above discussions, we are of the considered view that the applicant has failed to make out any case for relief from the Tribunal.

26. Consequently, the present Original Application being devoid of merit is dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

B. V. Rao
(B. V. RAO)
JUDICIAL MEMBER