

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.0668/2014
MA No.2479/2015

Order Reserved on:29.11.2016

Pronounced on:13.12.2016.

**Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Smt. Jetinder Kaur,
W/o Sh. Harjeet Singh,
E-10/1 Ground Floor & Basement,
Vasant Vihar,
New Delhi-110057.

-Applicant

(By Advocate: Ms. Sriparna Chatterjee)

Versus

1. Union of India through
the Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi-110008.
2. Union Public Service Commission (USPC),
Through the Secretary,
Dholpur House, Shahjahan Road,
New Delhi-110069.

-Respondents

(By Advocates: Mr. Ravinder Aggarwal & Mr. D.S. Mahendru)

O R D E R

Mr. K.N. Shrivastava, Member (A):

The applicant, through the medium of this Original Application (OA), filed under Section 19 of the Administrative Tribunals Act, 1985, has prayed for the following specific reliefs:

“(a) pass an appropriate order/direction for promotion of the applicant to SAG (Supertime Administrative Grade) level, post of Consultant in Dental Surgery for the year 2009-10 under the DACP Scheme w.e.f. 2009-10.

(b) grant all consequential benefit to the applicant which she is entitled in law and pass such other or further orders) as may be deemed fit and proper in facts and circumstances of the present case.”

2. The brief facts of this case are as under:

2.1 The applicant was appointed as a Dental Surgeon on ad hoc basis on 16.09.1981 at Safdarjung Hospital. Her services were regularized w.e.f. 29.01.1988 on the recommendation of the Union Public Service Commission (UPSC).

2.2 The applicant approached this Tribunal in OA No.49/1988 praying for regularization of services with effect from the date of her appointment on ad hoc basis, i.e., 16.09.1981. The OA was allowed vide order dated 22.12.1989; the operative part of which reads as under:

“(i) The applicant must be deemed to have been regularly appointed to the post of Dental Surgeon w.e.f. 16.9.1981. Her seniority in the cadre of Dental Surgeons would also count from the said date. Her pay should notionally be fixed on par with those of the regular Dental Surgeons with effect from

1981 and she would also be entitled to notional increments from 1981. In the facts and circumstances of the case, we do not direct payment of the difference between the pay and allowances given to her and the pay and allowances to which she is entitled to, as mentioned above, upto the 18th December, 1987, i.e., the date of the judgement of the Tribunal in Dr. (Mrs.) Sangeetha Narang's case. She would, however, be entitled to arrears of pay and allowances from 18.12.1987 and the same should be released to her within a period of two months from the date of communication of this order.

(ii) The respondents shall grant maternity leave to the applicant in case she had applied for the same and during the period of maternity leave, she should be entitled to leave salary, as admissible under the rules.”

2.3 The applicant was granted Non-Functional Selection Grade (NFSG) on 25.08.2006. The 5th Central Pay Commission recommended Dynamic Assured Career Progression (DACP) Scheme. The said Scheme was implemented by the Ministry of Health and Family Welfare (Respondent No.1) vide Annexure A-3 order dated 29.10.2008 up to the Senior Administrative Grade (SAG) in respect of officers of Central Health Scheme (CHS) and Dental Surgeons under the Ministry. The Respondent No.1 also published Annexure A-4 seniority list of Dental Surgeons in various grades dated 18.06.2013.

2.4 The applicant has been craving for the grant of SAG scale to her under the DACP Scheme. Her case was considered for promotion to SAG in the DPC meeting held in UPSC (Respondent No.2) on 10.02.2010. The DPC declared her 'unfit' due to her below benchmark grading. Later on, Respondent No.1 sent several requests to Respondent No.2 to hold DPC

meeting to consider the case of the applicant along with others for promotion to SAG but every time the Respondent No.2 turned down the request on the ground that the Recruitment Rules (RRs) have not been amended and unless the RRs are amended, the DPC meeting cannot be held. Aggrieved by the said action of the Respondent No.2, the applicant has filed the instant OA, praying for the reliefs as indicated above.

3. Pursuant to the notices issued, the respondents entered appearance and filed their individual reply. The applicant filed rejoinder to which sur-rejoinder was also filed by the respondents.

4. The Respondent No.2 in its reply has submitted as under:

i) A DPC meeting was held in its office on 10.02.2010 to consider selection of eligible Dental Surgeons for promotion to SAG under the DACP Scheme of Respondent No.1 and in all, 13 eligible officers, including the applicant, were considered, out of which seven officers were recommended for promotion to the SAG of Consultant in Dental Surgery under the DACP Scheme.

ii) The Respondent No.1 submitted another proposal in November, 2012 to convene a meeting of the DPC to consider promotion of officers to the SAG of Consultant in Dental Surgery under the DACP Scheme. The proposal included three

names of eligible candidates, including the present applicant. In response, UPSC (Respondent No.2) advised the Ministry that there are two sets of rules in vogue for promotion to SAG level under Respondent No.1; (a) time bound promotion without linkage to vacancies under DACP Scheme as per the executive instructions contained in OM dated 29.10.2008 and (b) promotions in accordance with the statutory RRs notified in February, 1998. It was pointed out that this has created an anomalous situation. Reference was also drawn to the judgment of the Hon'ble Apex Court in the case of **Union of India v. Ramakrishna**, [AIR 2005 SC 4295], in which it was held that "*the settled position of law is that no court order, notification or circular can be substitute of statutory rules framed with the authority of law*". Accordingly the proposal was returned to Respondent No.1.

iii) The Respondent No.1 requested the Respondent No.2 again vide letter dated 03.09.2013 to re-consider the case of all the three Dental Surgeons, including the present applicant. It was also stated therein that there were no more officers required to be considered for promotion to SAG level other than those three, in the near future. However, the Respondent No.2 stood its ground and said that unless the corresponding changes are brought in the RRs, the proposal cannot be considered.

5. The Respondent No.1 in its reply has stated as under:

a) The DACP Scheme was extended to Central Health Services (CHS) on 05.04.2002 and extended to SAG level without linkage to vacancies both in respect of CHS Doctors and Dental Doctors w.e.f. 29.10.2008. As per the Scheme, the Dental Surgeon in NFSG (PB-4+Grade Pay Rs.8700) are eligible for promotion to the grade of Consultant of Dental Surgery (PB-4+Grade Pay Rs.10,000) after rendering seven years of regular service.

b) The DPC meeting held in UPSC (Respondent No.1) considered 13 Dental Surgeons NFSG for promotion to SAG of Consultant in its meeting held on 10.02.2010. The DPC recommended promotion of only seven of them. The remaining six were found to be unfit on account of below benchmark ACR grading. The list of these six officers also included the present applicant.

c) The below benchmark grading of the ACR of the applicant pertains to the year 2003-04 wherein she was assessed 'Good'. The said ACR was subsequently reviewed and upgraded to 'Very Good' with the approval of the Competent Authority vide Annexure R-3 letter dated 29.07.2011.

d) A proposal was sent to the DoPT seeking their advice with regard to holding of review DPC. The DoPT did not agree,

instead advised that the OM dated 13.04.2010, whereby the DACP Scheme was brought into effect, is applicable for further DPCs only and no DPC would be undertaken as a result of the upgradation of the ACR.

e) A fresh proposal, however, was sent to Respondent No.2 (UPSC) containing names of only three eligible candidates, including the present applicant vide Annexure R-5 letter dated 23.11.2012. However, the UPSC returned the proposal insisting that the RRs are required to be amended before the proposal could be considered. The UPSC also gave reference of the judgment of the Hon'ble Apex Court in **Rama Krishna** (supra).

f) Another proposal was sent thrice in the year 2013 to the UPSC to consider the three Dental Surgeons for promotion to SAG. The UPSC stood its ground and returned the proposal again insisting on the amendment of the RRs.

6. The arguments of the learned counsel of the parties were heard on 29.11.2016.

7. We have considered the arguments of the learned counsel for the parties and have also perused the pleadings and the documents annexed thereto. Admittedly, in the DPC meeting held in the office of Respondent No.2 on 10.02.2010, seven Dental Surgeons (NFSG) identically placed vis-a-vis the applicant were recommended by the DPC for promotion to SAG

of Consultant in Dental Surgeon'. The applicant was declared 'unfit' as her grading was below benchmark. At that point of time, the DPC recommended promotion for the seven candidates entirely in terms of the DACP Scheme. At that time neither the DPC nor Respondent No.2 insisted on the amendment of the RRs so as to align them with the DACP Scheme.

8. The grading of the applicant for the year 2003-04 as 'Good' had come in the way of her promotion when the DPC considered her case in its meeting held on 10.02.2010. The said ACR has since been upgraded by the Competent Authority vide Annexure R-3 letter dated 29.07.2011. The Respondent No.1 had submitted the proposal to promote three candidates including the present applicant once in the year 2012 and thrice in the year 2013. The Respondent No.2 has been stonewalling the proposal on the ground that the RRs are required to be amended in consonance with the DACP Scheme, before the DPC considers these candidates for promotion to SAG of Consultant under the DACP Scheme. The Respondent No.2 has been taking shelter under the judgment of the Hon'ble Apex Court in **Rama Krishna** (supra). The varying instance of Respondent No.2 is indeed intriguing. The factual situation in the year 2010 when the DPC met and recommended promotion of seven candidates and that in the years 2012 and 2013 has

remained the same. The RRs were never amended. As such, we have no hesitation in observing that the Respondent No.2 has unfairly treated the applicant and has denied her legitimate claim for promotion particularly in view of the fact that the ACR of the applicant for the year 2003-04 as 'Good' has since been upgraded by the Competent Authority, vide Annexure R-3 order dated 29.07.2011 as 'Very Good'. Had the DPC met in the year 2012, as requested by the Respondent No.1, the applicant would have got her promotion. Thus, we are constrained to observe that the Respondent No.2 has violated the principles of equality enshrined in Articles 14 and 16 of the Constitution.

9. The applicant has since retired from service after attaining the age of superannuation on 28.02.2014. At this stage, it would be futile to direct the respondents to hold a review DPC to consider her case. Nevertheless, the injustice meted out to her is required to be redressed. In this view of the matter, we issue the following directions to Respondent No.1:

(i) The Respondent No.1 shall examine the service records of the applicant and decide as to whether the applicant was indeed eligible for promotion to the SAG of Consultant in Dental Surgery after the upgradation of her ACR for the year 2003-04 as per the norms adopted by the DPC in its meeting held on 10.02.2010 in the office of Respondent No.2.

ii) If the Respondent No.1 comes to the conclusion that the applicant was indeed eligible for promotion, then the Respondent No.1 shall grant promotion to the applicant in the SAG of Dental Surgeon (Group 'A' PB-4+Grade Pay 10,000) w.e.f. 01.10.2013, considering that the last proposal for convening the DPC for granting promotion to the applicant was sent by Respondent No.1 to Respondent No.2 on 02.09.2013. Needless to say that the applicant shall be entitled to all consequential benefits flowing from the promotion.

10. The OA is accordingly disposed of.

11. MA-2479/2015 filed by the respondents, seeking permission to file Sur-Rejoinder has become infructuous, as the Sur-Rejoinder has already been taken on record. Therefore, no separate orders are required to be passed in the MA, which is accordingly disposed of.

12. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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