

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.2712/2016

WITH

OA No. 2771/2016

OA No.2946/2016

OA No.4066/2016

OA No.4192/2016

OA No.4189/2016

Order reserved on 08.03.2017
Order pronounced on 24.08.2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

OA No.2712/2016

1. Dr. Santosh Kumar Sharma, Age about 59 years
S/o Late Sh. Kalyan Prasad Sharma
R/o D-II/3, MCD Officers Flats
10-Rajpur Road, Delhi-110054.
 2. Dr. Pratibha Sharma, Age about 59 years
D/o Late Y.K. Shastri
75, Hargovind Enclave
Vikas Marg Extension
Delhi-92.
- ..Applicants

(By Advocates: Shri A.K. Behera, Shri A.K. Sharma and Shri Manish Verma)

Versus

1. Union of India, Through Secretary
Ministry of Health & Family Welfare
Govt. of India
Nirman Bhawan, New Delhi.

2. Deptt. of Personnel & Training
through its Secretary
North Block, New Delhi.
3. Ministry of AYUSH through its Secretary
Ayush Bhawan, B Block, GPO Complex
INA, New Delhi-110023.
4. North Delhi Municipal Corporation
Through Commissioner
Dr. S.P. Mukherjee Civic Centre
JLN Marg, New Delhi.
5. East Delhi Municipal Corporation
Through Commissioner
Udyog Sadan Patparganj Industrial Area
Delhi. ..Respondents

(By Advocates: Shri R.N. Singh, Mrs. Harvinder Oberoi, Mrs. Anupama Bansal, Shri D.S. Mahendru, Shri N.K. Singh for Mrs. Avnish Ahlawat, Shri Balkishan, Ms. Avinash Kaur and Shri K.M. Singh)

OA No.2771/2016

Dr. Mahi Pal Singh, Age 60 years
S/o Sh. Parsu Ram, R/o B-689, MIG Flat
East of Loni Road, Delhi-93. ..Applicant

(By Advocates: Shri A.K. Behera, Shri A.K. Sharma and Shri Manish Verma)

Versus

1. The Govt. of NCT of Delhi
Through Director of Local Bodies
Players Building, ITO, New Delhi.
2. East Delhi Municipal Corporation
Through its Commissioner
Udyog Bhawan, Patparganj
New Delhi.

3. North Delhi Municipal corporation
Through its Commissioner
Civic Center, New Delhi.

4. South Delhi Municipal Corporation
Through its Commissioner
Civic Center, New Delhi.

..Respondents

(By Advocates: Shri R.N. Singh, Mrs. Harvinder Oberoi, Mrs. Anupama Bansal, Shri D.S. Mahendru, Shri N.K. Singh for Mrs. Avnish Ahlawat, Shri Balkishan, Ms. Avinash Kaur and Shri K.M. Singh)

OA No.2946/2016

Dr. Bajindra Singh, Age about 60 years
S/o Shyam Lal, R/o 53, Pragati Apartments
(Club Road), Paschim Vihar
Delhi-110063.

..Applicant

(Presently working as CMO (NFSG)
Homeopathy under deptt. of AYUSH,
Homeopathy Wing)

(By Advocates: Shri A.K. Behera, Shri A.K. Sharma and Shri Manish Verma)

Versus

1. Govt. of NCT of Delhi
Through its Chief Secretary
A-Wing, 5th Floor
Delhi Secretariat, I.P. Estate, New Delhi.

2. The Principal Secretary
(Health & Family Welfare)
(GNCT of Delhi)
9th Level, A-Wing, IP Estate
Delhi Secretariat, Delhi-110002.

3. The Principal Secretary
Directorate of AYUSH
Govt. of NCT of Delhi
New Delhi-110003.

4. The Union of India
Through its Secretary
Ministry of Health & Family Welfare
Room No.348, 'A' Wing
Nirman Bhavan, New Delhi-110011.

5. Director/Deputy Director
Director of AYUSH
Govt. of NCT of Delhi
New Delhi-110003.

..Respondents

(By Advocates: Shri R.N. Singh, Mrs. Harvinder Oberoi, Mrs. Anupama Bansal, Shri D.S. Mahendru, Shri N.K. Singh for Mrs. Avnish Ahlawat, Shri Balkishan, Ms. Avinash Kaur and Shri K.M. Singh)

OA No.4066/2016

Dr. Ram Naresh Sharma
S/o Sh. Daulat Ram Sharma
Aged about 60 years, Group 'A'
R/o:-Kush-704, Agrasen Apartment 66
I.P. Extension, Delhi-110092.

At present working as Chief Medical Officer(NFSG)
Ayurvedic Dispensary Kasturba Hospital, New Delhi)

..Applicant

(By Advocates: Shri A.K. Behera, Shri A.K. Sharma and Shri Manish Verma)

Versus

1. North Delhi Municipal Corporation
Through the Commissioner
12th Floor, Department of Ayurveda
Dr. S.P. Mukherjee Civic Centre
JLN Marg, New Delhi.

2. The Secretary, M/o Health & Family Welfare
Govt. of India, Nirman Bhawan
New Delhi.

3. Department of Ayurveda, Yoga
Unani, Sidha & Homeopathy (Ayush)
Through its Secretary
Ministry of Health and Family Welfare
IRCS Building, New Delhi. ..Respondents

(By Advocates: Shri R.N. Singh, Mrs. Harvinder Oberoi, Mrs. Anupama Bansal, Shri D.S. Mahendru, Shri N.K. Singh for Mrs. Avnish Ahlawat, Shri Balkishan, Ms. Avinash Kaur and Shri K.M. Singh)

OA No.4192/2016

Dr. Santosh Sharma
W/o Sh. R.D. Sharma
Aged about 60 years, Group 'A'
R/o: D-20, Tandon Road
Adarsh Nagar, Delhi-110033

At present working as Director (Ayurveda)
NDMC RMS, AYD, Hospital, Haiderpur
Delhi

..Applicant

(By Advocates: Shri A.K. Behera, Shri A.K. Sharma and Shri Manish Verma)

Versus

1. North Delhi Municipal Corporation
Through the Commissioner
12th Floor, Department of Ayurveda
Dr. S.P. Mukherjee Civic Centre
JLN Marg, New Delhi.
2. The Secretary, M/o Health & Family Welfare
Govt. of India, Nirman Bhawan
New Delhi.
3. Department of Ayurveda, Yoga
Unani, Sidha & Homeopathy (Ayush)
Through its Secretary
Ministry of Health and Family Welfare
IRCS Building, New Delhi. ..Respondents

(By Advocates: Shri R.N. Singh, Mrs. Harvinder Oberoi, Mrs. Anupama Bansal, Shri D.S. Mahendru, Shri N.K. Singh for Mrs. Avnish Ahlawat, Shri Balkishan, Ms. Avinash Kaur and Shri K.M. Singh)

OA No. 4189/2016

Dr. Satya Prakash Harit
S/o Sh. Shiv Charan Dass Harit
Aged about 60 years, Group 'A'
R/o:-552, Kanungo Apartments
71, I.P. Extension, Patparganj
Delhi-110092.

At present working as Chief Medical Officer(NFSG)
Department of Ayush, I/CAY, DISP. Narain Dutt
Ram Nagar, New Delhi. ..Applicant

(By Advocates: Shri A.K. Behera, Shri A.K. Sharma and Shri Manish Verma)

Versus

1. North Delhi Municipal Corporation
Through the Commissioner
12th Floor, Department of Ayurveda
Dr. S.P. Mukherjee Civic Centre
JLN Marg, New Delhi.
2. The Secretary, M/o Health & Family Welfare
Govt. of India, Nirman Bhawan
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3. Department of Ayurveda, Yoga
Unani, Sidha & Homeopathy (Ayush)
Through its Secretary
Ministry of Health and Family Welfare
IRCS Building, New Delhi. ..Respondents

(By Advocates: Shri R.N. Singh, Mrs. Harvinder Oberoi, Mrs. Anupama Bansal, Shri D.S. Mahendru, Shri N.K. Singh for Mrs. Avnish Ahlawat, Shri Balkishan, Ms. Avinash Kaur and Shri K.M. Singh)

ORDER

Justice Permod Kohli, Chairman

The issue in the present bunch of OAs being common in nature, same are being disposed of by this common order.

2. Applicants in these OAs are Doctors who are serving in the discipline of Ayurveda/Homeopathy. Applicants in OA No.2712/2016 are posted in North Delhi Municipal Corporation and East Delhi Municipal Corporation respectively. Applicant No.1 was due to retire on 31.08.2016, whereas applicant No.2 on 31.10.2016 on attaining the age of 60 years. Applicant in OA No.2771/2016 was initially appointed as General Duty Medical Officer (GDMO) in the erstwhile Municipal Corporation of Delhi and on trifurcation of the Corporation, was allocated to East Delhi Municipal Corporation in the year 2014 and is presently posted as Additional Medical Superintendent. He was due to retire on 31.07.2016. Applicant in OA No.2946/2016 is presently working as CFO (NFSG) in the Homeopathy Wing of Directorate of AYUSH in the Government of NCT of Delhi. He was due to retire on 31.08.2016 on attaining the age of 60 years. Applicant in OA No.4066/2016 is working as CMO (NFSG), Ayurveda

Dispensary, Kasturba Hospital, Delhi, and was scheduled to retire on 31.12.2016 on attaining the age of 60 years. Applicant in OA No.4192/2016 is presently working as Director (AYUSH), North Delhi Municipal Corporation. He is in the grade of CMO (NFSG). He was due to retire on 31.01.2017 on attaining the age of 60 years. Applicant in OA No.4189/2016 is working as CMO (NFSG), Department of AYUSH with North Delhi Municipal Corporation and was due to retire on 31.01.2017 on attaining the age of 60 years.

3. The facts are being noticed from OA No.2712/2016. Vide order dated 10.02.2017, this OA was treated as the lead case. Pleadings filed by the respondents are treated as common to all cases.

4. It is the common case of the parties that the age of retirement of Doctors irrespective of the discipline to which they belong was 60 years under the existing rules prior to issuance of order No.12034/1/2014-CHS-V dated 31.05.2016 issued by the Government of India, Ministry of Health and Family Welfare. The aforesaid order reads as under:

"The President is pleased to enhance the age of superannuation of the Specialists of Non-Teaching and Public Health Sub Cadres of

Central Health Service (CHS) and General Duty Medical Officers of CHS to 65 years with immediate effect.”

Above order was followed by amendment in the Fundamental Rule 56 vide GSR-567(E) dated 31.05.2016 whereby clause (*bb*) to FR-56 was amended as under:

“(bb) The age of superannuation in respect of General Duty Medical Officers and specialists included in Teaching, Non-Teaching and Public Health sub-cadres of Central Health Service shall be sixty-five years.”

Vide the aforementioned order/rule, the age of superannuation of the Specialists of Non-Teaching and Public Health Sub Cadres of Central Health Service (CHS) and General Duty Medical Officers of CHS was enhanced to 65 years with immediate effect. It is the case of the applicants that the Hon’ble Prime Minister of India made a recent announcement that the superannuation age of all Doctors would be enhanced from 60 to 65 years, and the aforesaid order has been issued pursuant to the decision of the Government of India followed by amendment to rules. However, by virtue of the aforesaid order/rule, the age of superannuation has been enhanced only in respect to the Allopathic Doctors who are working in CHS in various sub

cadres, whereas Doctors working in the Department of AYUSH in the disciplines of Ayurveda/ Yoga/Unani/Sidha/Homeopathy have not been brought within the purview of the aforesaid order. The applicants have accordingly filed this OA seeking a direction for enhancement of age of superannuation in respect to all categories of Doctors working under different Municipal Corporations and other organizations. The North Delhi Municipal Corporation also passed an order dated 30.06.2016 enhancing the age of retirement of Specialists of Non-Teaching and Public Health Sub Cadres and GDMOs working in the North Delhi Municipal Corporation to 65 years with effect from the date of issue of the order dated 31.05.2016 by the Government of India, Ministry of Health and Family Welfare. Aforesaid order is reproduced hereunder:

“North Delhi Municipal Corporation
Central Establishment Department
13th Floor, Dr. S.P. Mukherji Civil Centre
New Delhi-110002

No.:-AC(Estt.)/HC(M)/2016/1560

Date: 31.06.2016

OFFICE ORDER

In pursuance of order No.A.12034/1/2014-CHS-V dated 31.05.2016 of Ministry of Health &

Family Welfare, Govt. of India, the age of retirement of the Specialist of Non Teaching and Public Health Sub-Cadres and General Duty Medical Officers working in the North DMC is hereby enhanced to 65 years from the date of issue of said orders of Govt. of India.

This issues with the approval of the Competent Authority and with anticipatory approval of Hon'ble Mayor, North Delhi Municipal Corporation in anticipation of approval of North Delhi Municipal Corporation.

Sd/-
(Pankaj Kumar Sharma)
Assistant Commissioner (Est.)/North"

5. The applicant No.1 submitted representation on 24.06.2016 to the Director (Personnel), North Delhi Municipal Corporation, followed by further representation dated 15.07.2016 to the Commissioner, North Delhi Municipal Corporation, requesting for enhancement of age of retirement of Doctors working under AYUSH Department on the similar lines as the Doctors of Allopathic system of medicines. Applicant No.2 also submitted a similar representation on 30.06.2016. Receiving no response, this OA has been filed.

6. The Tribunal vide various orders passed in different OAs stayed the superannuation of the applicants.

The interim order was passed in favour of the applicants in OA No.2712/2016 on 19.08.2016.

7. Separate counter-affidavits have been filed by respondents 1 and 3, i.e., Union of India, Ministry of Health and Family Welfare, and the Ministry of AYUSH; North DMC (respondent No.4) and respondent No.5, East DMC. In the first affidavit dated 19.08.2016 filed by the North DMC, it is stated that the respondent Corporation has also passed similar order granting benefit of enhancement in age of retirement to Specialists of Non Teaching and Public Health Sub Cadres and GDMOs working with the respondent Corporation by issuing order dated 30.06.2016 in respect of Allopathic Doctors only, and that the Corporation is not able to enhance age of retirement of Ayurvedic Doctors. In the subsequent affidavit dated 09.09.2016, it is clarified that the duties, functions and medicine system of Medical Officers belonging to AYUSH cadre is different than that of Medical Officers belonging to Allopathic cadre, and all the rules, policies and OMs granting any benefit in respect to Medical Officers belonging to Non Teaching and Public Health Sub Cadres and GDMOs are issued by the Ministry of Health and Family Welfare, Government of India, whereas in respect to

the Doctors working under AYUSH, the orders are issued by the Ministry of AYUSH, Government of India. It is further stated that the North DMC follows rules of the Ministry of Health and Family Welfare in the matter of Medical Officers of Allopathic cadre and for Medical Officers (AYUSH), of Ministry of Health (Department of AYUSH), Government of India. The plea of the North DMC is that in absence of any directions from the Ministry of AYUSH, no benefit can be granted to the applicants regarding enhancement in the age of superannuation.

8. Respondent No.5, East DMC, in its affidavit dated 18.11.2016 referring to order dated 31.05.2016 issued by the Government of India, has stated that the Corporation has not adopted the order dated 31.05.2016 for enhancement of the age of superannuation of Specialists of Non Teaching and Public Health Sub Cadres and GDMOs of CHS to 65 years. It is further stated that Vaid, Hakims etc. are not members of CHS. Further explanation is tendered that the Ministry of AYUSH has not enhanced the age of superannuation of Medical Officers of AYUSH, i.e., Vaid, Hakims to 65 years. The respondent Corporation has relied

upon office memorandum dated 30.08.2016, which reads as under:

"Subject: Clarification regarding enhancement of age of superannuation of CHS Doctors to 65 years.

The Ministry of Health & Family Welfare has been receiving numerous references from various quarters, like Autonomous Institutions/Associations/ State Governments where doctors, other than those belonging to Central Health Service (CHS), are working, seeking clarification as to whether this Ministry's Order No.A.12034/1/2014-CHS.V, dated 31.5.2016, is applicable to them.

2. The issue has been considered by the Government and it is clarified that the Order No.A.12034/1/2014-CHS.V, dated 31.5.2016, is applicable to doctors of Central Health Service (CHS) only. Departments/Ministries/State Governments/Autonomous Institutions may take decision, with the approval of their respective competent authorities, regarding the applicability of this Ministry's decision to enhance the age of superannuation of doctors to 65 years, as per their requirement and circumstances."

From a perusal of the aforesaid communication, it transpires that the Government of India has clarified that the order dated 31.05.2016 is applicable to Doctors of CHS only. However, Departments/Ministries/State Governments/Autonomous Institutions have been granted liberty to take decision with the approval of their respective competent authorities regarding applicability of the Ministry's decision

to enhance the age of superannuation of Doctors to 65 years as per their requirements and circumstances.

9. In the counter-affidavit filed by the Union of India, Ministry of Health and Family Welfare and Ministry of AYUSH (respondents 1 & 3), it is stated that the applicants were employees of North DMC and East DMC and their grievances need to be redressed by them, i.e., respondents 4 and 5, and not the respondents 1 and 3. These respondents have objected to their impleadment as party respondents in the OA. At the same time, it is mentioned that the OA is misconceived, frivolous and liable to be rejected, stating therein that the Ministry of Health and Family Welfare vide order dated 31.05.2016 has enhanced the age of superannuation of specialists of Non-Teaching and Public Health sub-cadres and GDMOs of CHS to 65 years with immediate effect in consonance with the announcement made by the Hon'ble Prime Minister. It is further stated that AYUSH Doctors are not covered by the aforesaid order. Referring to office memorandum dated 30.08.2016 issued by the Ministry of Health and Family Welfare, it is stated that the order dated 31.05.2016 is applicable to Doctors of CHS only and other departments/State Government/autonomous

institutions may take decision with the approval of their competent authorities regarding applicability of the Ministry's decision to enhance the age of superannuation of Doctors to 65 years as per their requirements and circumstances. Thus, it is left to all the concerned organizations to take decision regarding enhancement of age of superannuation.

10. The applicants have filed two rejoinders – one to the counter-affidavit filed by respondents 1 and 3 and the other by respondent no.5. In the first rejoinder, it is stated that both the North DMC and East DMC are governed by the conditions of service in respect of Doctors issued by the Government of India on 31.05.2016. To canvass this, reliance is placed upon Delhi Municipal Corporation Service Regulations, 1959. Relevant regulations for purposes of the present OA are noticed hereunder:

“3. To whom applicable. – Unless otherwise provided in the Act or these regulations shall apply to all municipal officers and other municipal employees and is chargeable to the 'General Account' of the Municipal Fund.

Provided that nothing in these regulations shall apply to such municipal officers and other municipal employees as are appointed under any contract or render part-time service or are in receipt of daily wages.

4. Conditions of service of municipal officers and other municipal employees. –

(1) Unless otherwise provided in the Act or these Regulations, the Rules for the time being in force and applicable to Government servants in the service of the Central Government shall as far as may be regulate the conditions of service of municipal officers and other municipal employees except in respect of matters relating to provident funds subject to the modifications that any reference in the Rules to a Government servant the Consolidated Fund of India, the Civil Surgeon and the Medical Committee shall be construed as a reference respectively to a municipal officer or other municipal employees, the Municipal Fund, the Municipal Health Officer and Medical Board constituted by the Commissioner (*emphasis added*).

(2) Any power (other than the power under the Fundamental Rules to make rules) exercisable under the Rules by the President, head of department or head of office shall be exercisable:

(a) in the case of municipal officers and other municipal employees whose minimum monthly salary is less than three hundred and fifty rupees (exclusive of allowances):

(i) by the Standing Committee in respect of municipal officers and other municipal employees immediately subordinate to the Municipal Secretary or the Municipal Chief Auditor;

(ii) by the Commissioner in respect of other officers and employees.

(b) In the case of municipal officers and municipal employees whose minimum monthly salary is three hundred and fifty rupees or more

(exclusive of allowances) by the Corporation."

11. We have also examined the rules called the Delhi Health Service (Allopathy) Rules, 2009, constituted vide notification dated 23.12.2009. The conditions of service of the Doctors appointed under these Rules are governed by rule 14. Relevant extract of rule 14 reads as under:

"14. Pension & other conditions of service.

(1) The conditions of service of the members of the service in respect of matters not expressly provided for in these rules, shall, mutatis mutandis and subject to any special orders issued by the government in respect of the Service, be the same as those applicable to officers of the Central Civil Services in general."

Similarly, separate rules have been framed, namely, the Delhi Health Services General Duty Medical Officers (Homoeopathy) Amendment Rules, 2015, for Homoeopathy Doctors working under the Government of NCT of Delhi. The service conditions of the Service constituted under these rules are governed by rule 12 of the Rules, relevant extract of which reads as under:

"The conditions of service of the members of the service in respect of matters not expressly provided for in these rules, shall, mutatis mutandis and subject to any special orders issued by the Government in respect of the

Service, be the same as those applicable to officers of the Central Civil Services in general.”

From the perusal of the aforesaid Rules, it is evident that the service conditions of the members of both these services in respect of matters not expressly provided for in these rules, shall *mutatis mutandis* and subject to any special orders issued by the Government in respect of the service, be the same as those applicable to the officers of the Central civil services in general. There is no separate provision under these rules relating to the age of retirement of the members of the service and no separate notifications have been issued by the Government relating to the retirement age of Doctors in the Homoeopathy service. Thus, the age of retirement of the Doctors working under the Allopathy system of medicines in DHS or under the Homoeopathy system under the Government of NCT of Delhi shall be governed by the rules regulating the retirement age for the Central Government employees. This is with particular reference to the Doctors working in the CHS.

12. The applicants have further referred to the Sixth Central Pay Commission's recommendations relating to the medical and para-medical services as contained in Chapter

3.6 of the Report. Relevant paras are reproduced hereunder:

"3.6.2 Central Health Service

Central Health Service (CHS) was constituted in 1963. The Service was declared a Group A Central Service in 1973. It was restructured in 1982 and divided into four sub cadres viz. Teaching Specialists, Non Teaching Specialists, Public Health Specialists and General Duty Medical Officer. The present strength of each sub-cadre is as under:-

- General Duty Medical Officer sub-cadre- 3139
- Teaching Specialists sub-cadre – 638
- Non-Teaching Specialists sub-cadre – 780
- Public Health Specialists sub-cadre – 078

In addition there are 13 posts in the Higher Administrative Grade, which are common to all the four sub cadres."

"3.6.7 DACP

The Fifth CPC had recommended scheme of Dynamic Assured Career Progression (DACP) for different streams of doctors upto the scale of Rs.14300-18300. For Group A posts, Assured Career Progression Scheme (ACPS) was recommended by the Fifth CPC. The Government did not extend the ACP Scheme to non isolated Group A posts and in the case of isolated posts, the ACP scheme was implemented with the modification that two promotions shall be provided after 12 and 24 years of service instead of 3 (after 4 years, 9 years, 13 years) recommended by Fifth CPC. However, the scheme of DACP as recommended by Fifth CPC was implemented for doctors in CHS and a few other cadres. The scheme of DACP is different from ACPS in the sense that the designation also changes under the former.

The scheme, therefore, cannot be equated to that of ACPS. The scheme also does not suffer from any of the short-comings evident in the extant scheme of Assured Career Progression. Accordingly, DACP would need to be retained in its existing form. Further, the scheme would need to be extended to other categories of Doctors presently not covered under the scheme as similar career advancement has to be ensured for all Doctors whose basic work remains same irrespective of the organization or service to which they belong. Accordingly, the Commission recommends that the DACP scheme recommended by the Fifth Central Pay Commission for different streams of doctors should be extended to all Doctors including those working in isolated posts. The promotions under DACP for other categories of Doctors will be guided by the same conditions as applied in case of Doctors working in Central Health Scheme. (emphasis added)"

"3.6.12 The recommendations made in respect of doctors shall equally apply in respect of the cadre of dental surgeons as well (emphasis added).

3.6.13 Presently, Government Physicians exist in various streams of Indian Medicine like Ayurveda, Yoga, Sidha, Unani and Homoeopathy. The Fifth Central Pay Commission had recommended a general parity with General Duty Medical Officers (GDMOs) for these streams. The Fifth CPC had also recommended creation of an organized service called Central Indigenous & Homoeo Medical Service for these streams. While creation of a separate organized service may not be necessary, however, the scheme of DACP recommended by the Commission for Allopathy doctors should be extended, mutatis-mutandis, to the doctors of various streams of Indian Medicine like Ayurveda, Yoga, Sidha, Unani and Homoeopathy. This will ensure that the general parity of these streams is attained vis-à-vis the

general medical officers belonging to Allopathy streams in Central Government Hospitals etc. (*emphasis added*)”

These recommendations clearly suggest that the expert body like Pay Commission found parity amongst the Doctors in Allopathy including Dental Surgeons and Indian system of medicines and recommended common conditions of service. The applicants have also placed reliance on a judgment of this Tribunal in OA No.2563/2010 – ***All India CGHS YURVEDIC Physicians Association & others v Union of India & others***, decided on 26.11.2013.

13. In the second rejoinder, the applicants have claimed parity with the Doctors in the Allopathy system of medicines.

14. We have heard the learned counsel for parties at length. The principal question which needs examination and consideration by this Tribunal is whether the Doctors working in various disciplines under the Ministry of AYUSH, or, may be dental doctors, are entitled to the benefit of the enhancement of age of superannuation as notified for the Doctors in the CHS belonging to the discipline of Allopathy on the principle of parity, and whether denial of such benefit to the Doctors belonging to the discipline other than

Allopathy, is discriminatory in nature and violative of the principles enshrined under Articles 14 and 16 of the Constitution of India.

15. Parties have filed detailed written submissions as well. The applicants along with their written submissions have referred to Cabinet decision No.663 dated 29.10.2001 by the Government of NCT of Delhi regarding the time-bound career progression scheme for Physicians and Teachers of ISM&H. It is worthwhile to notice that at the relevant time, there was no separate Ministry/Department of AYUSH and the Doctors of Indian system of medicine were also part of the Ministry of Health and Family Welfare, Government of India, and under similar Ministry of the State Government. The proposal for grant of time-bound career progression scheme benefit to the Physicians and Teachers of ISM&H was considered by the Government of NCT of Delhi, and it was decided as under:

"Cabinet decision No.663 dated 29.10.2001

Sub: Time bound Career Progression Scheme for Physicians and Teachers of ISM&H.

Ref: No.2/194/99/NHMS/ dated NIL

The proposal was considered and approved. It was decided that as proposed in para 15(i), the facilities for Medical Officers would be at par

with the Govt. of India in all respects. As far as the teaching staff is concerned, the facilities would be at par with those to the teaching institutions of Modern System of Medicine (Allopathic) in the Govt. of Delhi.”

16. It appears that after creation of a separate Ministry of AYUSH, separate Delhi Health Service was created for GDMOs (Homoeopathy) and recruitment rules, namely, Delhi Health Services General Duty Medical Officers (Homoeopathy) Rules, 2016 were notified vide notification dated 18.03.2016. Government of NCT of Delhi vide its communications dated 05.09.2016 and 23.09.2016 requested the Ministry of AYUSH to intimate whether retirement age in respect of AYUSH Doctors working under the Ministry of AYUSH has also been enhanced from 62 to 65 years and the Government of NCT of Delhi had received number of representations from GDMOs (AYUSH) working under them for the same in the light of the order dated 31.05.2016 of the Government of India.

17. Rule 12 of the Delhi Health Services General Duty Medical Officers (Homoeopathy) Rules, 2016 deals with liability for service and other conditions of service of the Doctors governed by the said rules. Sub-rule (3) of rule 12 reads as under:

“(3) The conditions of service of the members of the service in respect of matters not expressly provided for in these rules, shall, *mutatis mutandis* and subject to any special orders issued by the Government in respect of the Service, be the same as those applicable to officers of the Central Civil Services in general.”

By virtue of the aforesaid Rules, the conditions of service of the members of Delhi Health Service (Homoeopathy) in respect of matters not expressly provided for in these Rules shall *mutatis mutandis* be same as applicable to officers of the Central Civil Services in general. Referring to these Rules, it is argued by the learned counsel for applicants that the Government order dated 31.05.2016 in respect to the CHS would apply to the Doctors (Homoeopathy) of the Government of NCT of Delhi. It is further contended that since an amendment has been carried out in FR-56, referred to hereinabove, and the Fundamental Rules being also applicable to the members of the Delhi Health Service (Homoeopathy), the provision incorporated in the Fundamental Rules in respect to the CHS would be applicable to the Doctors under Ministry of AYUSH as well.

18. It is also argued on behalf of the applicants that office memorandum dated 30.08.2016 clearly provides that Departments/Ministries/State Governments/Autonomous

Institutions are at liberty to take decision with the approval of their respective competent authorities regarding applicability of office memorandum dated 31.05.2016 to enhance the age of superannuation of Doctors within their services to 65 years.

19. The expression "*mutatis mutandis*" has been defined by various dictionaries. The Hon'ble Supreme Court in ***M/s Ashok Service Centre & another v State of Orissa*** [(1983) 2 SCC 82] considered the scope and meaning of "*mutatis mutandis*" and observed as under:

"17. Section 3 (2) of the Act which makes the provisions of the Principal Act *mutatis mutandis* applicable to the levy of additional tax is a part of the charging provision of the Act and it does not say that only those provisions of the Principal Act which relate to assessment and collection of tax will be applicable to the proceedings under the Act. Before considering what provisions of the Principal Act should be read as part of the Act, we have to understand the meaning of the expression '*mutatis mutandis*'. Earl Jowitt's 'The Dictionary of English Law 1959)' defines '*mutatis mutandis*' as 'with the necessary changes in points of detail'. Black's Law Dictionary (Revised 4th Edn.1968) defines '*mutatis mutandis*' as 'with the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like, *Housman v. Waterhouse*, 191 App Div 850, 182 NYS 249, 251.' In Bouvier's Law Dictionary (3rd Revision, Vol. II), the expression '*mutatis mutandis*' is

defined as 'The necessary changes. This is a phrase of frequent practical occurrence, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like'. Extension of an earlier Act *mutatis mutandis* to a later Act brings in the idea of adaptation, but so far only as it is necessary for the purpose, making a change without altering the essential nature of the thing changed, subject of course to express provisions made in the later Act...."

A co-ordinate Bench of this Tribunal in OA No.1468/2012 –

Dr. Anil Kumar Jain and others v Union of India and

others, decided on 23.12.2013, relying upon the aforesaid

judgment of the Apex Court considered the meaning and

import of the expression "*mutatis mutandis*" and observed

as under:

"8. The judgments cited by the learned counsel for the respondents on the issue of fixation of cut off date is not relevant for the purposes of deciding the relief sought by the applicants in the present OA. This is because the present matter or the decision affecting the applicants, does not relate to fixation of a cut off date. It relates to applicability of the Scheme on the applicants with effect from the same date as it was made applicable to the doctors of Central Health Service. When bye-laws 31 and 42 provide for "*mutatis mutandis*" applicability of Government rules and orders, the question needs to be addressed is whether the respondents would have the power to alter any of the conditions of a facility provided to the doctors of Central Health Service in a manner different from the same. The answer to the above question to our mind is in the negative, specifically because of the view expressed in

the judgment in Ashok Service Centre (supra) regarding the meaning of Mutatis Mutandis by the bye laws. This would imply that the same facility or benefits would pass on to the applicants without any alteration or modification in respect of its contents or the date from which it has to be made effective on the applicants and cannot be different from what was given to the doctors of the Central Health Service w.e.f. 5.4.2002, i.e. the date of issue of the letter.'

20. Our attention is also drawn to the Regulations framed under the Delhi Municipal Corporation Act, 1957. All the three Municipal Corporations in Delhi have been created under the said Act. The aforementioned Regulations have been framed in exercise of power under Section 98 of the Act. Relevant extract of Section 98 is reproduced hereunder:

"98. Power of Corporation to make regulations.—(1) The Corporation may make regulations to provide for any one or more of the following matters, namely:—

(a) the tenure of office, salaries and allowances, provident funds, pensions, gratuities, leave of absence and other conditions of service of officers and other employees appointed under this Chapter;

xxx xxx xxx

(e) any matter which is incidental to, or necessary for, the purpose of regulating the appointment and conditions of service of persons appointed to services and posts under the Corporation and any other matter for which in the opinion of the Corporation provisions

should be made by regulations.”

Clause (a) of sub-section (1) of Section 98 empowers the Corporation to frame regulations regarding the tenure of office, salaries and allowances and various other conditions of service of officers and employees of the Corporation. Clause (e) of sub-section (1) further empowers the Corporation to frame regulations on other matters which are incidental to or necessary for purposes of regulating the appointment and conditions of service of persons appointed to services and posts under the Corporation, etc. Section 89 also empowers the Corporation to appoint suitable persons to various posts and categories as referred to therein. Relevant extract of Section 89 reads as under:

“89. Appointment of certain officers.—
(1) The Corporation shall appoint suitable persons to be respectively, the Municipal Engineer, the Municipal Health Officer, the Education Officer, the Municipal Chief Accountant, the Municipal Secretary and the Municipal Chief Auditor and may appoint one or more Deputy Commissioners and such other officer or officers of a status equivalent to or higher than the status of any of the officers specified earlier in this sub-section as the Corporation may deem fit on such monthly salaries and such allowances, if any, as may be fixed by a Corporation.”

In exercise of power under Section 98, the Corporation has

framed the Delhi Municipal Corporation Service Regulations, 1959. Regulation 4 quoted hereinabove stipulates that unless otherwise provided in the Act or Regulations, the rules for the time being in force and applicable to Government servants in the services of the Central Government shall, as far as may be regulate the service conditions of officers and other municipal employees. The exception created is in respect to matters relating to provident funds subject to modifications. There is further clarification that any reference in respect to a Government servant, the Consolidated Fund of India, the Civil Surgeon and the Medical Committee shall be construed as a reference respectively to a municipal officer or other municipal employees, the Municipal Fund, the Municipal Health Officer and Medical Board constituted by the Commissioner.

21. The applicants have also referred to and relied upon the Sixth CPC recommendations. Recommendation at para 3.6.7 makes provision for Dynamic Assured Career Progression (DACP Scheme for different streams of doctors up to the scale of Rs.14300-18300. It is made applicable for all doctors whose basic work remains the same irrespective of organisation or service to which they belong, and thus a

recommendation was made for the application of DACP scheme to all doctors, including those working in isolated posts. Para 3.6.12 also makes the aforesaid scheme applicable to doctors working in the cadre of dental surgeons, whereas para 3.6.13 makes this scheme applicable to Government Physicians under various streams of Indian Medicine, like Ayurveda, Yoga, Sidha, Unani and Homoeopathy. A coordinate Bench of this Tribunal has applied this scheme to all the categories vide its judgment dated 26.11.2013 passed in OA No.2563/2010 (*supra*).

22. From a conjoint reading of the Delhi Health Service (Homoeopathy) Rules 2016, regulation 4 of the DMC Regulations 1959 and the recommendations of the Central Pay Commission, we are of the considered view that the service conditions of the Doctors working under the CHS, Delhi Health Service and Municipal Corporations, whether in the discipline of Allopathy or AYUSH, are same. Irrespective of whether the Doctor is an Allopathic Doctor or an AYUSH Doctor, the common professional obligation of all Doctors is to provide health care in their respective systems of medicines/treatment. Their salaries are also not shown to be different. The only distinction between the different

streams of Doctors is their own method of treatment, nonetheless all the Doctors are performing same kind of duties in their respective fields, i.e., treating patients and providing health care at various levels. Under such circumstances, creating a distinction for purposes of enhancement of age, in our considered opinion, would be discriminatory, arbitrary and thus violative of Articles 14 and 16 of the Constitution. The letter dated 30.06.2016 issued by the Government of India, Ministry of Health and Family Welfare adopts the enhancement of age as allowed by order dated 31.05.2016 by the Ministry of Health and Family Welfare in respect to the specialists of Non-Teaching and Public Health sub-cadres and GDMOs working in the North DMC to 65 years. It does not make any distinction between a specialist of Non-Teaching and Public Health sub-cadres and GDMOs of Allopathic system of medicines and Indian system of medicines. In the pleadings of the respondents, this distinction is sought to be created. Letter dated 30.08.2016 does not in any manner create a distinction between the Allopathic Doctors and Doctors working in Indian system of medicines. The Ministry of Health and Family Welfare has left it open to the departments/ organizations/State Governments/autonomous institutions

to make similar provisions in their respective organizations on the basis of their requirements and circumstances. From the entire pleadings of the respondents, no distinction has been drawn between the Doctors working under the Allopathic system and the Indian system of medicines. Letter dated 30.08.2016 permitting every department/organization/State Government/autonomous institutions to enhance the superannuation age further strengthens the claim of the applicants that virtually there is no distinction between their service conditions. It is only the question of adaptation by the respective organizations. Since the Regulations framed by the Municipal Corporation which are common to all the three Corporations and the North DMC vide order dated 30.06.2016 having approved the enhancement of age in the North DMC from the date of issue of the Government of India orders dated 31.05.2016, the distinction seems to be absent. No valid reason has been indicated in the replies filed by the respondents classifying the Doctors working under the Indian system of medicines to be different from those working under the Allopathic system of medicines. We may also notice that Ayurveda is the oldest system of medicines, perhaps the oldest of all systems. The efficacy and effectiveness of the

treatment under the Ayurveda system of medicines is no less than other systems, rather in some of the fields it is considered to be more suitable. This is also true of the Homoeopathy System of medicines. It is to the common knowledge that a large number of people are following the Ayurveda and Homoeopathy systems of medicines. The Government of India has also created a separate Ministry of AYUSH (Ayurveda, Yoga, Unani, Sidha and Homoeopathy) to give impetus to these alternative systems of medicines. These systems are in no manner inferior to the Allopathic system of medicines.

23. The Hon'ble High Court of Delhi in WP(C) No.460/2007 and connected cases in ***Dr. Asha Aggarwal & others v Union of India & others***, decided on 11.01.2008 considered the question of enhancement of age of GDMOs from 60 to 62 years on the basis of the decision taken by the Ministry of Health and Family Welfare, Government of India in respect to three categories of doctors, namely, Teaching Specialists, Non-Teaching Specialists and Public Health Specialists. GDMOs were excluded from the benefit of enhancement of age. The GDMOs approached the Tribunal, which rejected their contention of discrimination

and the grant of similar benefit. The Hon'ble High Court examined the issue threadbare and considering the whole scheme of enhancement of age in view of recommendations of the Javed A. Chawdhury Committee and all related and allied issues, and in the light of the principles enshrined under Articles 14 and 16 of the Constitution of India, came to the conclusion that such exclusion is discriminatory in nature. Relevant observation of the Hon'ble High Court are reproduced hereunder:

".....Though we find prima facie that it was not justified to exclude GDMOs and action of the Government suffers from vice of hostile discrimination and is, therefore, violative of Articles 14 and 16 of the Constitution, we do not express our final opinion on this aspect and would leave the matter to the Sixth CPC to decide about the justification for the enhancement of the age of GDMOs. However, at the same time we are of the opinion that if the Sixth CPC recommends enhancement of age of retirement of GDMOs to 62 years and the Government accepts that recommendation, it would be clear vindication of the stand of the petitioners who belong to the category of GDMOs. In such as case, the interest of justice would be subserved by giving effect to the decision of enhancement of age from the date the other sub-cadres were given, i.e., vide OM dated 16.11.2006.

21. We may note that all these petitioners have retired as they were made to retire at the age of 60 years. If and when the age of retirement of GDMOs is increased with effect from 16.11.2006, the petitioners shall also be

accorded benefit thereof and their deemed date of retirement shall be extended by two years and consequential benefits of arrears of pay etc. shall be given to them.”

24. Mr. R. N. Singh learned counsel appearing for respondents has also referred to and relied upon various judgments of the Hon’ble Supreme Court. In ***Union of India & others v Lieut (Mrs.) E. Iacats*** [(1997) 7 SCC 334], the controversy was different age of retirement of different categories of Military Nursing Service. The Hon’ble Supreme Court while considering the issue, found that the Military Nursing Service (Regular) and Military Nursing Service (Civilian) are distinguishable from Military Nursing Service (Local). The terms and conditions of two sets of employees belonging to different Nursing Services being different, the provision for different retirement age, cut-off date and pensionary benefits would not be discriminatory in nature. While noticing the conditions of service to find out the applicability of the equality doctrine, the Hon’ble Supreme Court observed as under:

“3.....The contention of the respondent that it is discriminatory not to have prescribed the same age of retirement for her as is prescribed for other military nursing services cannot be accepted. The terms and conditions attaching to the other two military nursing services are different from the terms and conditions

attaching to Military Nursing Service (Local). One major difference lies in the fact that those who are appointed to Military Nursing Service (Local) are not liable to transfer and that married women or widows with children can avail of this service without any problem. We are told that under the terms and conditions of service of the other two military nursing services the person appointed is liable to be transferred from one place to another and that there are also restrictions on married women or women with children being appointed to the other two services. If different nursing services are constituted under separate army instructions carrying their own separate terms and conditions of service, one cannot complain of discrimination if the ages of retirement prescribed under these different services are different. Each will be governed by its own rules and regulations. The respondent is, therefore, not justified in claiming that she has been discriminated against because she has retired at the age of 55."

In ***Nitya Ranjan Guha v State of West Bengal & another*** [(2010) 5 SCC 661] the Hon'ble Supreme Court approved the different age of retirement for those who crossed the age of 60 years and for those who are yet to cross the age of 60 years. Relevant observations of the Apex Court are reproduced hereunder:

"6. So far as the classification into two categories of officers is concerned, those who had crossed the age of 60 years and those who had not crossed the age of 60 years clearly fell into two classes. The circumstances in which the Government is giving effect to the Rules under the Hindu Marriage Act depends upon the exigencies such as the number of officers

available and the number of likely applicants. When specific facts had not been asserted in relation to the Rules framed under the Hindu Marriage Act, nor was it urged before the Division Bench of the High Court, we do not think we can enter into investigation of the facts arising in relation to that. Therefore, we did not permit the learned counsel to advance contentions on this point.

7. So far as the present Rules are concerned, as stated earlier, the classification made is clear and if certain exigencies are kept in mind in framing of the Rules, the same should not be taken exception of. Indeed in identical circumstances in *Bishun Narain Misra v. State of U.P.* [AIR 1965 SC 1567 : (1965) 1 SCR 693] adverted to earlier, this is what this Court has stated: (SCR p. 698 F-H)

“There was no force in the contention that the new rule was discriminatory inasmuch as different government servants were retired on 31-12-1961 at different ages. The rule treated alike all those who were between the age of 55 and 58 years. Those who were retired on 31-12-1961 certainly retired at different ages but that was so because their services were retained for different periods beyond the age of 55. The Government was not obliged to retain the services of every public servant for the same length of time. The retention of public servants after the period of retirement depended upon their efficiency and the exigencies of public service, and in the present case the difference in the period of retention had arisen on account of the exigencies of public service.”

In ***Sureshchandra Singh v Fertilizer Corporation of India Ltd*** [(2004) 1 SCC 592], the issue before the Hon'ble Supreme Court was different age of retirement for the employees below Board level who retired at the age of 58 years and those of Board level employees who retired at the age of 60 years. It was held:

"7. The appellants assail the decision of the Board on the ground of violation of principles of equality. It is alleged that the Board-level employees were allowed to continue in service till the age of sixty and employees like the appellants who were below the Board level were forced to retire at the age of fifty-eight. In reply the respondents submitted that the Board-level employees could not be equated and compared with the other employees. Wholetime directors, who are two in numbers, are directly appointed by the President of India for a fixed term of five years that could be reviewed even earlier; and that other members of the Board are government servants and are nominees or representatives from various Ministries and are appointed by the President of India for a term of three years. In these circumstances we find that the Board of Directors themselves form a different class and cannot be compared with other employees in regard to conditions of service applicable to them. Allegation of discrimination is also raised by the appellants vis-à-vis employees of other corporations. Each public sector undertaking is an independent body/entity and is free to have its own service conditions as per law. However, all employees in FCIL who are working in its various units and divisions retire at the age of fifty-eight as per the relevant rules; and that even the future employees will retire at the age of fifty-eight. We also find that the employees of different

corporations could not be treated alike since every corporation will have to take into account its separate circumstances so as to formulate its policy and consequently, the argument that there is discrimination of appellants vis-à-vis employees of other corporations also cannot be accepted. Thus, the appellants have failed on all grounds. The appeals stand dismissed.”

25. It is strenuously argued by Mr. R. N. Singh that to lay down the conditions of service of Government servants is a policy matter and the employer has the absolute prerogative to lay down the service conditions of the employees, and the same being within the realm of expertise, no interference by the court is permissible and cannot be interfered in exercise of the power of judicial review. He relied upon the famous judgment of the Apex Court in ***P. U. Joshi & others v Accountant General, Ahmedabad & others*** [(2003) 2 SCC 632]. Relevant observations of the Hon’ble Supreme Court are as under:

“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the

Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

26. It is also the case of the respondents that in exercise of the power of judicial review the Tribunal cannot direct the respondents to frame statutory rules or amend the existing statutory rules framed under Article 309 in a specific manner so as to alter the conditions of service of the civil servants. There is no dispute with this proposition of law.

The Tribunal has no intention to direct the respondents to frame rules in a particular manner. That does not prevent the Tribunal from examining the issue of discrimination and consequently quash the offending provisions of any statute, particularly the delegated legislation, or to issue a prerogative writ to accord similar treatment to equally circumstanced categories to prevent or even abort a discriminatory action.

27. Ms. Harvinder Oberoi, Sr. Govt. counsel has submitted that the conditions of service of CHS Doctors (Allopathy) and the Doctors under AYUSH are different. Her further contention is that there is shortage of Allopathic Doctors whereas there is no shortage of AYUSH Doctors, and thus the distinction between the two categories of Doctors is evident, warranting different age of retirement for different categories, viz., Allopathic Doctors and AYUSH Doctors. She relied upon the judgment of the Apex Court in ***B. Narayana Murthy & others v State of Andhra Pradesh*** [(1971) 2 SCC 425]. In this case, the age of retirement was earlier enhanced from 55 to 58 years and then to 60 years, and thereafter again reduced to 55 years. Upholding the policy

of the Government in again reducing the enhanced age, the Apex Court held that there is no violation of Article 14.

28. The enhancement and reduction of age was uniform for the teachers in the service of the Andhra Pradesh Government working in different organizations, i.e., the State Government, Jilla Parishads, Panchayat Samitis, Municipalities etc. Approving the action of the Government, it was held that the same is not violative of Articles 14 and 16. The issue in the aforesaid case was not discrimination but rationality and reasonableness of the action. The action was uniform for all categories of teachers. This judgment has no application to the facts of the case in hand.

29. In ***State of Uttar Pradesh v Dayanand Chakrawarty & others*** [(2013) 7 SCC 595], two different ages of superannuation were prescribed for the employees of the UP Jal Nigam. The State of UP had a Public Health Engineering Department (for short, PHED). This department was performing all works related to public health engineering including sewerage and water supply. Another department, namely, Local Self-Government Engineering Department (for short, LSGED), was created which was converted from PHED, and all engineering works of Local

Self-Government were entrusted to the newly created department.

29.1. The State Government constituted the UP Jal Nigam under Section 3 of the Uttar Pradesh Water Supply and Sewerage Act, 1975. By virtue of Section 37(1) of the Act, services of employees and engineers of the LSGED were transferred and merged into the newly created Nigam on the same terms and conditions which were governing their services prior to such absorption, till said service conditions were to be altered/changed by rules or regulations framed in accordance with law. The Nigam in its Board meeting held on 04.04.1977 vide agenda item 2.21 resolved that all the provisions of Financial Handbook, Manual of government Order, Civil Services Regulations, Government Servant Rules and other Government orders would be applicable to the employees of the Nigam, provided the Nigam had not passed any other order. The Nigam also framed regulations under Section 97 of the 1975 Act with the prior approval of the State Government regulating recruitment to the posts and the conditions of service of persons appointed to the UP Jal Nigam Service of Engineers (Public Health Branch), known as the Uttar Pradesh Service of Engineers (Public

Health Branch) Regulations, 1977. Subsequently, 1978 Regulations were framed for regulating recruitment to the posts and conditions of service of persons appointed to the Jal Nigam Engineers (Public Health Branch). These Regulations were made applicable to the employees transferred and merged from the erstwhile LSGED and the employees directly recruited by the Nigam. These Regulations came into force with effect from 24.04.1978. Regulation 31 relating to pay, allowances, pension, leave and other conditions of service reads as under:

“31. Except as provided in these Regulations the pay, allowance, pension, leave, imposition of penalties and other conditions of service of the members of the service shall be regulated by rules, regulations or orders applicable generally to the government service in connection with the affairs of the State.”

By virtue of the aforesaid regulation, the age of retirement for the State Government employees came to be adopted for the employees of the Nigam, as no separate provision was made under the 1978 Regulations prescribing the age of superannuation for the employees of the Nigam.

29.2. At the relevant time, the age of retirement for the Government employees as per rule 56(a) of the Uttar Pradesh Fundamental Rules was 58 years. Rule 56(a) was

amended by the Uttar Pradesh Fundamental (Amendment) Rules, 2002 vide notification dated 27.06.2002 with effect from 28.11.2001, whereby the age of superannuation of the State Government employees was enhanced from 58 years to 60 years. The Nigam made an enquiry from the State Government as to whether the enhanced age of superannuation for the State Government employees would be applicable to the employees of the Nigam or not. In response thereto, the State Government conveyed that the employees of the Nigam were not entitled to the enhancement of the age of superannuation from 58 years to 60 years, as the same would be applicable only to the State Government employees. The Nigam vide its resolution dated 11.07.2002 notified the same.

29.3. The aforesaid decision of the State Government as also the resolution of the Nigam came to be challenged before the Hon'ble Supreme Court. The Apex Court vide its judgment in ***Harwindra Kumar v Chief Engineer, Karmik*** [(2005) 13 SCC 300] directed the Nigam to continue the employees till they attained the age of 60 years, and set aside the orders retiring the employees of the Nigam at the age of 58 years. The Apex Court also held that

unless regulation 31 is amended, the retirement age of the employees of the Nigam would remain the same as that of the State Government Employees. After the judgment in **Harwindra Kumar's** case (*supra*), regulations, namely, Uttar Pradesh Jal Nigam Employees (Retirement on Attaining Age of Superannuation) Regulations, 2005, were framed under sub-sections (1) and (2) of Section 97 of the Act of 1975. By virtue of regulations 3 and 4, different age of retirement was prescribed. Regulations 3 and 4 are reproduced hereunder:

"Retirement on Attaining Age of Superannuation

3. Age of superannuation of every employee who was employed in the Engineering Department of the Local Self-Government under Section 37(1) of the Act, and has been transferred to the Corporation and is employed in the Corporation, will be 60 years.

4. The age of superannuation of the employees different from those under Rule 3 above, will be 58 years. But the age of superannuation of the Group 'D' employees who have been employed prior to 5-11-1985, will be 60 years."

Thus, by virtue of regulation 3, the age of superannuation of employees of the Nigam who were transferred from the Engineering Department of the LSGED was enhanced to 60 years, whereas the age of superannuation of the employees

different from those under regulation 3 was kept at 58 years. However, the age of superannuation of Group 'D' employees employed prior to a cut-off date was kept at 60 years.

29.4. On framing of the above mentioned regulations, the Nigam filed a review petition before the Hon'ble Supreme Court seeking review of the decision in ***Harwindra Kumar's*** case (*supra*). This review was, however, dismissed by the Apex Court. A number of employees of the Nigam whose age of retirement was fixed under regulation 4 of the Regulations framed in 2005, filed writ petitions before the Hon'ble Allahabad High Court. The Hon'ble High Court vide its common judgment dated 21.05.2007 allowed the writ petitions declaring regulation 4 to the extent it provided superannuation age of 58 years for those Nigam employees directly recruited, as arbitrary and *non est*, and the petitioners were allowed to continue in service till the age of 60 years. In a special appeal filed by the Nigam before the Division Bench, the Hon'ble High Court vide its order dated 01.08.2007 did not stay the judgment of the Single Bench and the employees were allowed to continue up to the age of 60 years. The Nigam approached

the Hon'ble Supreme Court in ***U.P. Jal Nigam v Radhey Shyam Gautam*** [(2007) 11 SCC 507]. However, the Hon'ble Supreme Court dismissed the appeal in view of its earlier decisions in ***Harwindra Kumar*** (*supra*) and ***U. P. Jal Nigam v Jaswant Singh*** [(2006) 11 SCC 464], with the following observations:

"10. After the amendment made in Rule 56(a) of the Rules by the State Government and thereby enhancing the age of superannuation of government servants from 58 years to 60 years, the same would equally apply to the employees of the Nigam and in case the State Government as well as the Nigam intended that the same would not be applicable, the only option with it was to make suitable amendment in Regulation 31 of the Regulations after taking previous approval of the State Government and by simply issuing direction by the State Government purporting to act under Section 89 of the Act and thereupon taking administrative decision by the Nigam under Section 15 of the Act in relation to the age of the employees would not tantamount to amending Regulation 31 of the Regulations.

11. In *Harwindra Kumar case* [(2005) 13 SCC 300] the Division Bench decision on which the appellant places reliance was challenged. Orders passed by the High Court dismissing the writ petitions as well as those by the Nigam directing that the appellants of the civil appeals and the petitioners of the writ petitions would superannuate upon completion of the age of 58 years were set aside and it was directed that in case the employees have been allowed to continue up to the age of 60 years by virtue of some interim order, no recovery shall be made from them but in case, however, they have not

been allowed to continue after completing the age of 58 years by virtue of erroneous decision taken by the Nigam for no fault of theirs. They would be entitled to payment of salary for the remaining period up to the age of 60 years which was to be paid to them within a period of three months from the date of receipt of copy of this Court's order by the Nigam."

29.5. In the meantime, the Nigam again amended its regulations vide resolution dated 13.04.2008 and resolved to enhance the age of superannuation of its employees irrespective of their source of entry to 60 years. The said resolution was forwarded to the State Government for its approval. The State Government vide its order dated 03.07.2009 refused to accord approval to the recommendation of the Nigam. Aggrieved of the same, various employees of the Nigam filed writ petitions before the Allahabad High Court. By a common judgment dated 29.07.2010, the Lucknow Bench of the Allahabad High Court in ***Dayanand Chakrawarty v State of Uttar Pradesh*** [(2010) 6 All LJ 1] held the Regulations of 2005 unconstitutional as the same created two classes of employees in determining two separate retirement ages. Aggrieved of the judgment of the High Court, the State Government as also the Nigam approached the Hon'ble Supreme Court. The Apex Court vide judgment reported as

State of Uttar Pradesh v Dayanand Chakrawarty & others (*supra*) held as under:

"32. Since creation of the Nigam, irrespective of source of recruitment, the employees of the Nigam were treated alike for the purpose of superannuation and were allowed to superannuate at the age of 58 years as is evident from Regulation 31.

34. Further, as employees appointed from different sources, after their appointment were treated alike for the purpose of superannuation under Regulation 31, subsequently solely on the basis of source of recruitment no discrimination can be made and differential treatment would not be permissible in the matter of condition of service, including the age of superannuation, in absence of an intelligible differentia distinguishing them from each other. We therefore hold that the High Court by the impugned judgment [*Dayanand Chakrawarty v. State of U.P.*, (2010) 6 All LJ 1] rightly declared the 2005 Regulations unconstitutional and ultra vires Article 14 of the Constitution of India."

30. On the analysis of the factual matrix, we find that although the Doctors working under CHS and those working under the Indian system of medicines belong to different streams, nonetheless all the Doctors perform the similar nature of duties, i.e., treatment of patients and health care in their own systems of medicines. The service conditions of both the streams, though governed by separate rules, but are similar in nature. Rather rule 12(3) of Delhi Health

Service Rules applies all the rules of Central Government to the Doctors working in the Homoeopathy system of medicines. Regulation 4 of the Regulation framed under the Delhi Municipal Corporation Act, 1957 treat all the Doctors under different streams of medicines alike and all the service conditions applicable to the Central Government employees have been made applicable to the officers and employees working under various Municipal Corporations. Thus, for all practical purposes they are treated alike. The applicants have placed on record order dated 05.09.2014 at page 16 of OA No.4066/2016, whereby the benefit of DACP scheme was extended to AYUSH Doctors up to the SAG level. Reference is also made to Cabinet decision No.663 dated 29.10.2001 of Government of NCT of Delhi, referred to hereinabove, whereby the facility for the Medical Officers were allowed at par with the Government of India in all respects, and insofar as the teaching staff is concerned, facilities at par with the teaching staff working in teaching institutions of modern system of medicines (Allopathic) were allowed. All these documents clearly demonstrate the parityity of duties and equality of other working conditions. Though different rules govern them, but the rules are similar in nature, rather the terms and conditions of service provided under various rules

are same in nature. It is under these circumstances, we are of the considered view that the applicants cannot be treated differently than the Doctors working in various sub-cadres in the CHS. They are also entitled to the benefit of enhancement of age as notified vide Government order dated 31.05.2016. It is also relevant to notice that the Fundamental Rules have application to all the Government servants. The substituted Clause (*bb*) in FR-56 includes all categories of sub-cadres, i.e., GDMOs and specialists including teaching, non-teaching and public health sub-cadres of CHS. Though the amendment is only for CHS officers, but the Doctors under the Allopathic system of medicine working in the North DMC have also been extended the same benefit vide letter dated 30.06.2016 by the North DMC with effect from the same date the Doctors under CHS have been granted. Similar treatment cannot be denied to the Doctors working in the other two Corporations, i.e., South DMC and East DMC. The East DMC requested the Government of India, Ministry of AYUSH seeking application of the enhancement of age to AYUSH Doctors. The Ministry has not denied it. It is pertinent to note that even in the counter affidavit, the stand of the Union of India, Ministry of Health and Family Welfare, DOP&T and the Ministry of

AYUSH is that it has been left to the wisdom of the concerned organizations to grant the benefit of enhancement of age. No distinguishable features between the Doctors under the Allopathy system and those under AYUSH working in the Corporations have been demonstrated in the reply to deny them similar benefit as granted to the Allopathy doctors. There is in fact discrimination between the Doctors working in different Corporations. Even Allopathy Doctors working in the East and South DMCs have been denied similar treatment. There is no intelligible differentia for treating the Doctors working in Allopathy discipline including Dental Surgeons in CHS and those in MCD and/or in other organizations/streams differently. Similarly, the Doctors working in Indian system of medicines, i.e., under AYUSH, whether Homeopathy, Ayurveda, Unani or Sidha, who are also performing similar duties in their own system and are governed by similar service conditions also cannot be treated differently on the basis of the discipline. This action is clearly hostile and discriminatory in nature.

31. In view of the legal and factual analysis, these OAs are allowed with the following directions:

- (1) The action of the respondents and the Government order dated 31.05.2016 as also the amendment in FR-56(bb) to the extent the enhancement of age of superannuation is confined to the Doctors under the Central Health Service are declared *ultra vires* to the Constitution and violative of Article 14.
- (2) The applicants in the present OAs are entitled to similar treatment in regard to service conditions including the age of retirement as is available to Doctors working under the Central Health Service. The orders passed by the respondents retiring the applicants at the age of 60 years are hereby declared as null and void.
- (3) The applicants will be entitled to the benefit of enhancement of age of superannuation in terms of the Government of India order dated 31.05.2016 read with the amended FR-56.
- (4) A further direction in the nature of *mandamus* is issued to allow the applicants to continue in service till they complete the age of 65 years. If any of the applicants has been retired at the age

of 60 years, he/she shall be re-inducted into service till he/she completes the age of 65 years, and paid salary for the period he/she was out of service on account of retirement at the age of 60 years.

(K.N. Shrivastava)
Member(A)

(Justice Permod Kohli)
Chairman

/as/