

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.2788/2014

Order reserved on 12th July 2017

Order pronounced on 12th October 2017

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

1. Dr. Anupam Mondal s/o late Shri Murari Mohan Mondal
Age 58 years
Designation : Scientist 'F', DRDO-INMAS, Delhi
r/o P-25/2 DRDO Complex, Timarpur, Delhi – 110 054
2. Dr. Ashok Salhan s/o Shri Mela Ram
Age 60 years
Designation : Retired Scientist 'G', DRDO-DIPAS, Delhi
r/o D 811, Crescent Apartment Sec. 18A, Plot No.2,
Dwarka, Delhi – 110 075
3. Dr. L Ravi Shankar s/o late Maj. Gen. N Lakshmi pati
Age 55 years
Designation : Scientist 'F', DRDO-INMAS, Delhi
r/o C-60, Sec. 47, NOIDA (UP)
4. Dr. Kanti Lal Chakraborti
s/o late Shri Paresh Chandra Chakraborti
Age 55 years
Designation : Scientist 'F', DRDO-INMAS, Delhi
r/o 163, SFS DDA Flats, Mukherjee Nagar
Delhi – 54
5. Dr. Pradeep K Chugh s/o late Shri Om Prakash Chugh
Age 55 years
Designation : Scientist 'F', DRDO-INMAS, Delhi
r/o 774, Mukherjee Nagar, Delhi - 54
6. Dr. Rajnish Sharma s/o late Shri G S Sharma
Age 51 years
Designation : Scientist 'F', DRDO-INMAS, Delhi
r/o 26, SFS DDA Flats, Mukherjee Nagar, Delhi – 54
7. Dr. Aseem Bhatnagar s/o late Shri S P Bhatnagar
Age 51 years
Designation : Scientist 'F', DRDO-INMAS, Delhi
r/o C-3/228, Janakpuri, New Delhi
8. Dr. Mitra Basu s/o Shri Raj Singh
Age 47 years

Designation : Scientist 'F', DRDO-INMAS, Delhi
r/o B-06, DRDO Complex Timarpur, Delhi – 54

9. Dr. Rashmi Aggarwal d/o Dr. Hemant Aggarwal
Age 40 years
Designation : Scientist 'D', DRDO-INMAS, Delhi
r/o H.No.442, Sec. 16A, Faridabad, Haryana
10. Dr. Abhinay Jaimini s/o Dr. Vinod Jaimin
Age 34 years
Designation : Scientist 'C', DRDO-INMAS, Delhi
r/o 108 NAV Shakti Sadan Sector 13, Rohini, Delhi
11. Dr. Maria M D'Souza d/o Dr. Lazar Mathew
Age 42 years
Designation : Scientist 'E', DRDO-INMAS, Delhi
r/o EC 285 Maya Enclave, New Delhi – 64
12. Dr. Manan Oza s/o Shri Jogesh Bhai Oza
Age 33 years
Designation : Scientist 'F', DRDO-DIPS, Delhi
r/o 18, Raman Sc. Hostel, DRDO Residential Complex
Timarpur, Delhi – 54
13. Dr. Jyotsna S Shahpurkar
w/o Dr. Satish Kumar Amarnath
Age 56 years
Designation : Scientist 'E', DRDO-DEBEL, Bangalore
r/o 11, Ravi Kripa Satish Bhawan
1st Cross, 8th Main Vasanta Nagar
Bangalore – 560052

..Applicants

(Mr. Mukesh Kumar, Advocate)

Versus

1. Union of India through its Secretary
Department of Expenditure
Ministry of Finance, North Block,
New Delhi – 110 011
2. Department of Defence Research & Development
Ministry of Defence
Through its Secretary, DG of DRDO &
Scientific Advisor to Raksha Mantri
DRDO Bhawan, Raja Ji Marg
New Delhi
3. Ministry of Health & Family Welfare
Through its Secretary
Department of Health & Family Welfare
Govt. of India, Nirman Bhawan, New Delhi

..Respondents

(Mr. Satish Kumar, Advocate)

O R D E R

Mr. K. N. Shrivastava:

M.A. No.2401/2014

M.A. seeking joining together in a single petition is allowed.

O.A. No.2788/2014

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed for the following main relief:-

“(a) To grant the Dynamic Assured Career Progression (DACP) Scheme to the Applicants Medical Doctors herein retrospectively with effect from the date of the Office Memorandum dated 29.10.2008 issued by the respondent no.3 (Ministry of Health & Family Welfare), copy thereof is placed as Annexure: A-2 (Colly), page no.43 – 49.”

2. The factual matrix of the case is as under:-

2.1 The applicants are Medical Doctors posted in various Laboratories in Defence Research & Development Organization (DRDO) - respondent No.2 and their services are governed under the Defence Research & Development Service (DRDS) Rules, 1979. They are Central Government servants initially appointed as Scientist ‘B’ (Group ‘A’ gazetted post) and have promotions to successive Scientist grades up to the grade of Scientist ‘H’ (outstanding Scientist) as also to the highest grade of ‘distinguished Scientists’. These Medical Doctors are also recruited directly at higher grades of Scientist ‘C’, ‘D’ ‘E’, etc., depending upon the vacancies in certain DRDO laboratories.

2.2 The DRDS Rules, 1979 provide for Flexible Complimenting Scheme (FCS), which is a merit based promotion scheme, not linked to vacancy.

2.3 The Medical Doctors appointed by the Central Government under Central Health Services (CHS), on the lines of FCS, have been granted the benefit of Dynamic Assured Career Progression (DACP) Scheme, which came to be implemented as per the recommendations of 5th Central Pay Commission (CPC).

2.4 The DACP Scheme was notified by the Ministry of Health & Family Welfare vide letter No.21/14/97-PC (H) CHS-V dated 05.04.2002. The DACP Scheme, with certain modifications, was also recommended by the 6th CPC. The Central Government accepted the recommendations of 6th CPC and accordingly, Department of Expenditure, Ministry of Finance issued a Gazette Notification No.1/1/2008-IC dated 29.08.2008. The relevant part of said Notification is extracted hereinbelow:-

“Para 12. The Dynamic ACP Scheme for Doctors will be extended upto the Senior Administrative Grade (grade pay of Rs.10000 in PB-4) for Medical Doctors having 20 years of regular service, or seven years of regular service in the non-functional selection grade of Rs.8700 grade pay in PB-4. Also, all the Medical Doctors, whether belonging to Organized Services, or holding isolated posts, will be covered by the DACP Scheme.”

2.5 In compliance of the *ibid* Notification dated 29.08.2008 of the Department of Expenditure, Ministry of Health & Family Welfare (respondent No.3) issued O.M. dated 29.10.2008 whereby the existing DACP Scheme as available to CHS cadre was extended up to Senior Administrative Grade (SAG) to all Medical Doctors in Allopathy and other streams of Indian Medicines in all Central Government departments.

2.6 The claim of the applicants is that they are also Medical Doctors and hence entitled for the benefit of DACP Scheme. They had represented to respondent No.2 for grant of DACP Scheme, in response to which the said respondent, vide Annexure A-4 reply dated 14.11.2012, has informed them that a clarification has been sought from Ministry of Finance and a final decision in the matter will be taken only after receipt of the clarification. Since no decision has been taken by the respondents in regard to the representation of the applicants for grant of DACP Scheme benefits to them, the applicants have filed the instant O.A. praying for the relief as indicated in paragraph (1) *supra*.

3. The applicants have pleaded the following grounds in support of their claim:-

3.1 The DACP Scheme is meant for all Medical Doctors whether belonging to Organized Services or holding isolated posts. Hence, denial of DACP Scheme benefits to them is contrary to the equality principle enshrined under Articles 14 & 16 of the Constitution.

3.2 The DACP Scheme is a functional promotional Scheme specifically designed for the Medical Doctors to grant them time bound promotions due to specific nature of their duties, which is uniform all across the departments. The 6th CPC has also recommended DACP Scheme to all Medical Doctors uniformly. Hence denial of DACP Scheme benefits to the applicants would not be proper.

3.3 The applicants are presently covered under FCS for promotion, which has been erroneously continued even after the Gazette Notification dated

29.08.2008, whereby the DACP Scheme has been notified for all Medical Doctors, which should include the applicants as well.

4. Pursuant to the notice issued, the respondents entered appearance and filed their reply, in which they have made the following important averments:-

4.1 The applicants' services are governed by DRDS Rules, 1979. As per Allocation of Business Rules, 1961, the DRDS is exempt from the purview of Department of Personnel & Training (DoPT) in regard to matters relating to recruitment and promotion (Annexure R-3).

4.2 The DRDS Rules provide for merit based promotion under FCS right to the level of Scientist 'F' on the basis of evaluation of Annual Performance Appraisal Reports (APARs) and assessment interview. It further stipulates promotion to the higher grades to all Scientists, i.e., 'G' to 'H' on the basis of APARs and assessment by a Peer Committee prescribed in the DRDS Rules.

4.3 The 6th CPC in paragraph 3.5.6 of its Report has recommended for continuation of FCS with necessary modifications for all R & D professionals in all S & T Organizations. A representation of applicant No.1 and others was replied by respondent No.2 vide Annexure R-1 letter dated 10.06.2011 informing as to why the benefits of DACP Scheme cannot be extended to the Medical Doctors of DRDO. The letter also contains a clarification in this regard.

5. The applicants filed rejoinder to the reply filed on behalf of respondents and thereafter a sur-rejoinder was also filed by the

respondents. By and large, their respective pleadings have been reiterated by the applicants and respondents in their respective rejoinder / surrejoinder.

6. With the completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 12.07.2017. Arguments of Mr. Mukesh Kumar, learned counsel for applicants and that of Mr. Satish Kumar, learned counsel for respondents were heard.

7. The main thrust of learned counsel for applicants was that the applicants are Medical Doctors and DACP is meant for all Medical Doctors without making any distinction. He further submitted that the DRDO doctors also treat patients from outside as well. Mr. Mukesh Kumar cited the judgment of Hon'ble High Court of Judicature at Madras in **Union of India & others v. Deepak Sen & others** (2011 LawSuit (Mad) 185, in which the writ was filed by the Union of India challenging the judgment dated 23.04.2010 passed by the Madras Bench of this Tribunal in O.A. No.1177/2009, whereby the Madras Bench had allowed grant of DACP benefits to the doctors of hospitals attached to the Department of Atomic Energy. The said writ was dismissed by the Hon'ble High Court of Madras.

8. Mr. Mukesh Kumar contended that the Medical Doctors of DRDO are identically placed with the doctors of hospitals attached to Department of Atomic Energy, and hence are entitled for the benefits of DACP Scheme, as had been allowed by the Madras Bench of the Tribunal, which was duly upheld by the Hon'ble High Court of Madras.

9. *Per contra*, Mr. Satish Kumar, learned counsel for respondents submitted that the scientific Services under DRDO are exempt from the purview of DoPT and that service conditions of the DRDO Scientists, including its Medical Doctors, are governed in terms of DRDS Rules. Rule 8 (2) (h) of these Rules provides for career progression of the applicants under merit based FCS. There is a process prescribed for assessing the merit for the purpose. Mr. Satish Kumar argued that the DACP Scheme is completely different from FCS. He vehemently argued that the 6th CPC has specifically recommended continuation of FCS in DRDO and in other scientific organizations. He thus argued that the benefits of DACP Scheme cannot be extended to the Medical Doctors of DRDO.

10. Mr. Satish Kumar also submitted that the judgment of Hon'ble High Court of Madras in **Deepak Sen's** case (supra) has been stayed by the Hon'ble Supreme Court in SLP (C) No.23422/2011 vide order dated 17.11.2015, a copy of which he has placed on record.

11. We have considered the arguments of learned counsel for the parties and have perused the pleadings. Undisputedly, the service conditions of DRDO scientists are governed in terms of DRDS Rules, 1979. The applicants, who are Medical Doctors of DRDO, are also included under the nomenclature of Scientists. A merit based FCS is already an integral part of DRDS Rules for granting merit based promotions to the Scientists, including Medical Doctors, as per the process prescribed therein. Such merit based promotions are not vacancy linked.

12. The scientific services are also exempt from the purview of DoPT as per the Allocation of Business Rules. The 6th CPC has specifically recommended for continuation of the FCS for the scientific institutions. The specific recommendations made by the 6th CPC in this regard are as under:-

“3.5.6..... The Commission, therefore, recommends that the existing scheme of FCS with necessary modifications has to be continued for R&D professionals in all S&T organisations. Merit based promotion scheme in the Departments of Atomic Energy, Space and DRDO would also need to be persisted with...”

13. The recommendations of the 6th CPC for the scientific organizations have been accepted by the Government. It has, however, provided scope for tweaking the FCS. For the Medical Doctors of CHS as well as for doctors of organized services and those holding isolated posts, it has recommended modified DACP Scheme. Hence, it is crystal clear that the 6th CPC made a clear-cut distinction between the Medical Doctors of scientific institutions and those coming under the purview of Ministry of Health & Family Welfare & other Ministries. Respondent No.2 has also given a cogent clarification in its Annexure R-1 letter dated 10.06.2011 as to why the DACP Scheme cannot be extended to the Medical Doctors of DRDO. These clarifications are reproduced below:-

“6. In view of the foregoing, it is further clarified that:

- (a) There is no stagnation in DRDS cadre.
- (b) Scientifcs appointed in DRDO under DRDS with Medical/Dental qualification are involved in the Research and Development activities. In DRDO, Doctors are not appointed to treat the patient as in case of Railway, DGHS, and DAE etc.

(c) As Scientists, they draw all the benefits of two incentive increments and professional update allowance. For the purpose of DACP, they cannot disown the service (DRDS) and the designation of the service on the basis of which they have been appointed in DRDO and enjoyed other benefits of promotion in-situ under FCS and all the incentive schemes etc.

(d) In addition to the above benefits of DRDS Service, they are also entitled to draw Non practicing allowance.”

14. The judgment of Madras Bench of this Tribunal, which was upheld by the Hon’ble High Court of Madras in the case of **Deepak Sen** (supra), whereby the DACP Scheme was extended to the Medical Doctors attached of the hospitals attached to the Department of Atomic Energy, has been stayed by the Hon’ble Apex Court vide order dated 17.11.2015.

15. Taking all these into consideration, we are of the considered opinion that the applicants cannot be extended the benefits of DACP Scheme and that they have to earn merit based promotion only under the FCS. If they feel that FCS is not equitous, they can represent to the competent authority for tweaking the FCS for which even the 6th CPC has alluded in its report. We have no doubt in our mind that DACP Scheme is not meant for doctors attached to the hospitals of scientific institutions, including DRDO.

16. In the conspectus of discussions in the pre-paragraphs, the O.A. is dismissed being bereft of merit. No order as to costs.

(K.N. Shrivastava)
Member (A)

/sunil/

(Justice Permod Kohli)
Chairman