

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.2140/2016

Thursday, this the 21st day of September 2017

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

Dr. Shyam Behari Shrivastava s/o late Mr. R S Khare
r/o 55 A Sunder Apartments
GH-10, Paschim Vihar, Delhi – 87
Aged about 62 years
(Presently SAG officer working in Delhi Health Service, GNCT
Of Delhi)

..Applicant

(Mr. Ajesh Luthra, Advocate)

Versus

1. Govt. of NCT of Delhi
Through its Chief Secretary
A-Wing, 5th Floor
Delhi Secretariat, IP Estate, New Delhi
2. The Principal Secretary
(Health & Family Welfare)
(GNCT of Delhi)
9th Level, A Wing, IP Estate
Delhi Secretariat, Delhi – 2
3. The Medical Director
Dr. Baba Saheb Ambedkar Hospital
(Govt. of NCT of Delhi)
Sector VI, Rohini, Delhi – 85
4. The Union of India
Through its Secretary
Ministry of Health & Family Welfare
Room No.348, A Wing
Nirman Bhavan, New Delhi – 11

..Respondents

(Nemo for respondent Nos. 1 to 3,
Mr. Piyush Gaur, Advocate for respondent No.4)

O R D E R (ORAL)

Justice Permod Kohli:

The applicant was initially appointed as General Duty Medical Officer
in the cadre of Central Health Service (CHS) vide order dated 02.05.1978.

He earned promotions to the post of Senior Medical Officer, Special Grade – II, Senior Specialist Grade – I and finally to the Senior Administrative Grade (SAG). The applicant was manning various hospitals in Delhi, including the hospital owned by Govt. of NCT of Delhi, as the Govt. of NCT of Delhi had no cadre of its own. The Govt. of NCT of Delhi created its own cadre, for which a Service called Delhi Health Service (DHS) was constituted and DHS (Allopathy) Rules, 2009 were notified on 23.12.2009 and the applicant became the member of the DHS and is governed by the said Rules. Service conditions of the applicant are similar to Central Health Service (CHS) doctors.

2. The Government of India issued Notification dated 31.05.2016 for enhancement of age of superannuation of Specialists of Non-Teaching and Public Health sub cadres of Central Health Service (CHS) and General Duty Medical Officers (GDMO) of CHS to 65 years with immediate effect.

3. The applicant was due to retire on attaining the age of 60 years on 30.06.2016. Vide Office Order dated 19.02.2016, he was communicated about his retirement. The relevant order reads as under:-

“OFFICE ORDER

On attaining the age of superannuation, Dr. S.B. Shrivastava, Consultant (Dermatology) stands retired w.e.f. 30.06.2016 (A/N). As per service record his Date of Birth is 01/07/1954.

sd/-
(Dr. Puneeta Mahajan)
Medical Superintendent”

It is stated that the applicant has made two representations dated 10.06.2016 and 15.06.2016 for grant of benefit of the order dated 31.05.2016 to him. The applicant also belongs to the Allopathy discipline

and is performing similar duties as CHS doctors and cannot be treated differently.

4. The controversy in the present case is squarely covered by a recent judgment of this Tribunal in the matter of **Dr. Santosh Kumar Sharma & others v. Union of India & others** (O.A. No.2712/2016 and connected O.As.) decided on 24.08.2017. In paragraph 30 of the said judgment, the Tribunal observed as under:-

“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 parity 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.

Following directions were issued in the aforesaid judgment:-

- (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.”

5. The directions issued in the aforesaid judgment shall apply to the applicant of the present O.A. as well.

6. Vide interim order dated 28.06.2016, the applicant was allowed to continue in service beyond the age of 62 years and is continuing to be in service.

7. In this view of the matter, this O.A. is allowed in terms of the aforesaid judgment. Impugned order dated 19.02.2016 for retirement of the applicant is hereby set aside. He shall be allowed to continue in service till he attains the age of 65 years.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

September 21, 2017
/sunil/