

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.3290/2017

M.A.No.3488/2017

Thursday, this the 28th day of September 2017

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

1. Indian Railway Medical Services Association
Through its Secretary General
Dr. Atul Gupta
s/o Sh. T S Gupta
aged 55 years
r/o 253/1B, Railway Officers Flats
Panchkuin Road, New Delhi - 110 001
2. Dr. A K Sharma
s/o Sh. R K Sharma
Additional Chief Health Director/NRCH
Aged 56 years
r/o 156/1, Basant Lane
Delhi - 110 055

..Applicants

(Mr. Sagar Saxena, Advocate)

Versus

1. Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training (DOPT)
Through its Secretary
North Block, New Delhi
2. Ministry of Railways/Railway Board
Through its Secretary
Rail Bhawan, Rafi Marg

..Respondents

(Mr. R N Singh and Mr. Shailendra Tiwari, Advocates)

O R D E R (ORAL)

Mr. K. N. Shrivastava:

M.A. No.3488/2017

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

O.A. No.3290/2017

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 reliefs:-

“a) Direct the Respondents to implement the recommendations of Sixth Pay Commission with respect to Non-Functional Upgradation in letter and spirit qua the Applicants, i.e. the officers of IRMS;

b) Direct the Respondents to immediately grant benefits accrued to the applicants as per the recommendations of Sixth Pay Commission including promotions to the applicant in accordance with the recommendations of Sixth Pay Commission and also release the arrears from the date it became due;

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

2.1 Applicant No.1 is a registered Association and applicant No.2 is one of its members. Applicant No.2 belongs to Indian Railway Medical Service (IRMS), whereas applicant No.1 is an Association of IRMS officers.

2.2 IRMS is one of the organized Health Services of the Central Government, as notified vide Annexure A-4 O.M. dated 03.04.2017.

2.3 The Dynamic Assured Career Progression (DACP) Scheme is applicable to all Medical Services, including IRMS and as such its the members are entitled for time bound promotion under the said Scheme.

2.4 Pursuant to the implementation of 6th Central Pay Commission (CPC), pay scales of all Central Government employees were brought under four Pay Bands together with Grade Pays. Pay Band 4 covers officers of the

rank of Director in Selection Grade and those in Senior Administrative Grade (SAG) and Higher Administrative Grade (HAG).

2.5 The Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training (DoPT) – respondent No.1, vide O.Ms. dated 24.04.2009, 21.05.2009, 25.09.2009 and 15.12.2009 described the modalities for the implementation of 6th CPC recommendations. In O.M. dated 24.04.2009 of DoPT, it was contemplated as under:-

“(i) Whenever an Indian Administrative Services Officer of the State of Joint Cadre is posted at the Centre to a particular grade carrying a specific grade pay in Pay band 3 or Pay Band 4, the officers belong to batches of Organised Group A Services that are senior by two years or more and have not so far been promoted to that particular grade would be granted the same grade on non-functional basis from the date of posting of the Indian Administrative Service Officers in that particular grade at the Centre.”

Further, in O.M. dated 21.05.2009 of the DoPT, it was stated as under:-

“A reference is invited to this Department OM of even No. dated 24.04.2009 on the above subject. As indicated at point (v) of para 1, the details of batch of the officers belonging to the Indian Administrative Service who have been posted at the Centre in the various grades of PB-3 and PB-3 w.e.f. 01.01.2006 as well as the date of posting of the first officer belonging to the batch is annexed. Necessary action may be taken for grant of higher scale for the officers belonging to the batches of Organized Group A Services that are senior by two year or more and have not so far been promoted to that particular grade.”

2.6 The DACP Scheme, applicable to the Medical Services, including IRMS, covers time bound promotions up to the SAG level but it is silent regarding its coverage of HAG level. Respondent No.2, vide O.M. dated 15.06.2011, accorded the benefits of Non-Functional Upgradation (NFU) to IRMS officers up to HAG level. This action of respondent No.2 was not

agreed to by respondent No.1. Consequently, respondent No.2, vide Annexure A-10 O.M. dated 26.03.2012, withdrew the NFU benefits granted.

Relevant portion of the said O.M. is extracted below:-

“4. Now, Department of Personnel & Training have advised that grant of non-functional HA Grade is not applicable to the doctors working in the Central Government including IRMS doctors working in the Ministry of Railways and the same should be withdrawn. Consequently, orders granting the benefits of non-functional upgradation to HAG granted to the doctors as per the orders issued vide No. E(O)III/2011/PM/27 dated 15.06.2011 will not be cancelled.”

Aggrieved by the withdrawal of NFU benefits vide Annexure A-10 O.M. dated 26.03.2012, the applicants have approached the Tribunal in this O.A. praying for the reliefs as indicated in paragraph (1) above.

3. One of the important grounds pleaded by the applicants in this O.A. is that the Hon'ble Delhi High Court in W.P. (C) No.4067/2014 in the case of **Joint Action Council of Service Doctor's Organization v. Ministry of Personnel, Public Grievances & Pensions, Deptt. of Personnel & Training & others**, decided on 13.10.2014, has held that the NFU benefits can be granted to eligible officers of Central Health Service (CHS), who are also beneficiaries of the DACP Scheme. Hence, the basic objection raised by respondent No.1 that grant of Non-Functional HAG is not applicable to the doctors working in the Central Government, including IRMS, is no more valid. Hence, it is pleaded that this O.A. can be decided in terms of the *ibid* judgment of the Hon'ble High Court.

4. When the case was taken up for consideration, learned counsel for the parties were *ad idem* that this O.A. can be disposed of in terms of the

judgment dated 13.10.2014 of Hon'ble Delhi High Court in **Joint Action Council of Service Doctor's Organization** (supra).

5. We have perused the *ibid* judgment of the Hon'ble High Court. The issue involved therein was identical to the one raised in the present O.A. Relevant portion of the judgment is extracted below:-

“18. The recommendations of the 6th CPC were to bring at par the pay of the officers in Pay Band – 2 and Pay Band – 3, who are senior by two or more years to the IAS officers who are posted at the Centre. The upgradation is non- functional, and does not create any right for promotion or deputation benefits for the officers who are given the upgradation, which is personal to them. The objective of the NFU Scheme appears to be to remove the disparity in the pay being drawn by officers of Group ‘A’ Services (PB-3 and PB-4) *vis-a-vis* IAS Officers of the State or joint cadre who are posted at the Centre. The endeavour appears to be to remove the said disparity to a certain extent, as only such of the officers of the organized Group ‘A’ Service would get non-functional upgradation, who are at least two years senior to the IAS officer posted at the Centre. Pertinently, the Tribunal had itself found in the earlier round (while deciding O.A. No. 1169/2010) that the intention of the NFU Scheme was to remove the disparity between the IAS and other Group ‘A’ Services. The aforesaid finding has become final and it was never challenged by the respondents. The thirteen reasons given by the respondents before the Tribunal-which were recorded in the impugned order itself, appear to be wholly irrelevant to the purpose for which the NFU Scheme was granted by the 6th Central Pay Commission to officers of Group ‘A’ organized services. In our view, it is wholly irrelevant that the DACP Scheme was implemented for the CHS Officers up to NFSG level as per the Fifth Central Pay Commission’s recommendation since 05.04.2002, whereas officers of other organized Group ‘A’ cadres were not granted such benefits. This is a historical fact of which the 6th CPC was aware. Yet it did not seek to deny the benefit of the NFU Scheme to the CHS. Obviously, the grant of NFU to the eligible officers of the CHS would be relevant, only if after grant of benefit under the DACP Scheme, there is disparity between the pay of the eligible officers in the organized Group ‘A’ Services and the pay drawn by the IAS Officer posted at the Centre. To us, it is clear that the reasoning adopted by the respondents to deny benefit of the NFU Scheme to the officers of the petitioners association-which, admittedly, is an organized Group ‘A’ Service, is founded upon wholly extraneous considerations which do not find mention in the recommendation of the 6th Central Pay Commission as accepted by the government and the said reasons do not shake the basic purpose

of the grant of NFU-as a personal upgradation to the eligible officers. Pertinently, even when clarifications were issued by the DoPT vide O.M. dated 25.09.2009, the DoPT did not seek to limit the scope of the entitlement to NFU, on the premise that where ACP or DACP schemes are in operation, the NFU shall not be admissible. Therefore, it appears to us, that the stand subsequently taken by the respondents to deny the benefit of the NFU Scheme to the eligible officers of the CHS, is clearly an after-thought.

19. Since we do not find any substance in the reasons given by the respondents to deny the benefit of the NFU Scheme to the officers of the petitioners associations, we have no hesitation in quashing the said decision of the respondents contained in the office memorandum dated 02.04.2010, which we hereby do.

20. For the above reasons, we are of the opinion that the impugned order of the Tribunal is unsustainable. It is, accordingly, set aside. The respondents are hereby directed to issue necessary and consequential orders granting benefit of the NFU Scheme as per the Sixth Central Pay Commission recommendations to the members of the Central Health Scheme – a Group ‘A’ organized service. The necessary orders in this regard shall be issued within six weeks from today.”

From the judgment of the Hon’ble High Court, it is quite clear that NFU benefits up to HAG level can be granted to the officers of IRMS in addition to their getting the benefits of DACP Scheme.

6. Accordingly, this O.A. is allowed in terms of the aforesaid judgment of Hon’ble Delhi High Court. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

September 28, 2017
/sunil/