

**Central Administrative Tribunal
Principal Bench**

OA No.3321/2016

New Delhi, this the 25th day of August, 2017

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

Dr. H. P. Singh
S/o Shri Ram Dular Singh
R/o 459, Laxmi Bai Nagar
New Delhi 110 023.

... Applicant.

(By Advocate, Ms. Deep Shikha Bharati)

Vs.

Union of India
Through Secretary
Ministry of Health & Family Welfare
Nirman Bhawan,
New Delhi 110 011.

... Respondent.

(By Advocate, Shri Gyanendra Singh)

: O R D E R (ORAL) :

Justice Permod Kohli:

The applicant was initially appointed as Dental Surgeon in the Government of India, Ministry of Health and Family Welfare, on 03.01.1997 in the pay scale of Rs.2200-75-2800-EB-100-4000. He was promoted as Junior Staff Surgeon (Dental) w.e.f. 18.10.2000 vide letter dated 09.01.2003. He earned further promotion to the post of Staff Surgeon (Non-Functional Selection Grade) in the pay scale of Rs.37,400-67,000 under Dynamic Assured Career Progression Scheme (DACP) vide order dated 07.06.2011, which was made applicable to

the Central Health Services and Dental Doctors under the Ministry of Health and Family Welfare vide Memorandum dated 29.10.2008. 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.

2. The applicant was due to retire on attaining the age of 62 years on 30.09.2016. Vide Office Order dated 17.09.2016, he was communicated of his retirement. The relevant order reads as under:-

“ OFFICE ORDER

Consequent upon attaining the age of superannuation (60) years, Dr. H. P. Singh, HOD (Dental) shall stand relieved of his duties w.e.f. 30.09.2016 (A.N.) . As per official record his date of birth is 03.09.2016.

/sd/

(Shambhu Kumar)
Deputy Director (Administration)”

It is stated that the applicant has made representation dated 13.06.2016 even prior to his retirement for grant of benefit of the order dated 31.05.2016 to all the Dental Doctors. It is further stated that upon the representation of the Central Government Dental Doctors' Association, Hon'ble Dr. Jitendra Singh, Minister of State, Prime Minister's Office, wrote letter dated 13.09.2016 to the Hon'ble Minister of Health and Family Welfare to take up appropriate view in

this regard. It seems that nothing happened and in the meantime, the applicant retired from service.

3. The claim of the applicant is that Dental Doctors in the Government of India have always been considered at par with GDMOs sub cadre of CHS. In this regard, reference is made to the order dated 16.11.1984 (Annexure A-1). The said order reads as under:-

“4. In view of the above mentioned facts this Ministry is of the opinion that posts in Dental Services should be categorized as Medical Posts rather than Non-Medical Posts, Dentistry must be a part and parcel of Directorate General of health Services both at the States as well as Centre.”

The applicant has also referred to the Ministry of Finance OM dated 06.11.1987 by which conveyance allowance admissible to Medical Officers/Specialists was also made applicable to the Dental Doctors. The Recruitment Rules were notified for Doctors vide Notification dated 07.03.1998, namely the Dental Post Recruitment Rules, 1997 by the Ministry of Health & Family Welfare, Government of India. It is stated that the conditions of service of the applicant under the aforementioned recruitment rules are same as Doctors in CHS. It is also the case of the applicant that the benefits of 5th Central Pay Commission regarding DACP Scheme for officers of CHS were also extended to the Dental Surgeons vide letter dated 05.04.2002. Vide another letter dated 25.08.2006, benefit of DACP Scheme was extended to Dental Doctors. Further, vide Office Memorandum dated

29.10.2008, the DACP Scheme was extended up to Senior Administrative Grade (SAG) in respect of Officers of CHS and Dental Doctors.

4. Ms. Deep Shikha Bharati, learned counsel for the applicant has referred to the definition of CHS as notified by the Ministry of Health and Family Welfare. The definition reads as under:-

“Central Health Services (CHS) is a centralized cadre governed by the Ministry of Health & Family Welfare, controlling Doctors all over India, placed across various ministries and the Delhi Government. It has an approximate strength of 4000 Doctors as on November, 2013. To monitor the various 6 sections are designated in the Ministry which are as under:-

- CHS-I
- CHS-II
- CHS-III
- CHS-IV
- CHS-V
- CHS-VI
- CHS Rules”

It is stated that the Code CHS-VI is for the Dental Doctors. In order to establish this fact, reference is made to the appointment order of the applicant dated 03.01.1997 wherein the aforesaid code has been mentioned. The same reads as under:-

“No.A.12034/2/94-CHS-VI”

Another reference is made to the promotion order of the applicant dated 09.01.2013, and again the following number is mentioned in the order:-

“No.A.32012/4/2001-CHS-VI”

Even the Office Memorandum dated 29.10.2008 (Annexure A-10) wherein DACP Scheme was applied to the SAG, the Dental Doctors are shown to be part of CHS. The subject of the said Memorandum reads as under:-

“Extension of Dynamic Assured Career Progression (DACP) Scheme upto Senior Administrative Grade (SAG) level in respect of officers of Central Health Service (CHS) and Dental Doctors under the Ministry of Health and Family Welfare.”

Same code is mentioned in the communication dated 25.08.2016, which reads as under:-

“No.A.45012/1/2002-CHS-VI”

Apart from the above, seniority list dated 17.05.2016 of Staff Surgeons (Dental) also mentions the same code. The same reads as under:-

"File No.A.23018/01/2014-CHS.VI"

From the above definition read with above mentioned documents on record, it appears that CHS include six categories. It is noticed that CHS-VI is category of “Dental Service”. Thus, the “Dental Surgeons” in CHS are a part of CHS.

5. The controversy in the present case is squarely covered by a recent judgment of this Tribunal in the matter of *Dr. Santosh Kumar Sharma & ors. vs. Union of India & Ors.* (OA No.2712/2016 & ors. decided on 24.08.2017) in case of Doctors in Indian System of Medicines. In para 30 of the aforesaid judgment, this Tribunal has 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."

6. The directions issued in the aforesaid judgment shall apply to the applicant of the present OA as well.

7. In this view of the matter, this OA is allowed in terms of the aforesaid judgment. Retirement of the applicant vide order dated 17.09.2016 is hereby set aside. He shall be deemed to be in service and be allowed to continue in service till he attains the age of 65 years. The applicant shall also be entitled to wages for the period he remained out of service on account of retirement at the age of 60 years.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/pj/