

**Central Administrative Tribunal
Principal Bench**

OA No.3795/2017

New Delhi, this the 17th day of November, 2017

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

Dr. Lata Arun Dupare
W/o Shri Arun Dupare
Aged about 60 years,
R/o 808, Balaji Market,
New Delhi 110 007.

.... Applicant.

also at

R/o Opp. English School
Plot No.476, Kukade Layout
Rameshwari Road, Bhagwan Nagar,
Parvati Nagar,
Nagpur, Maharashtra

Working as Dental Surgeon under Ministry of Health & Family
Welfare, CGHS, Group "A".

(By Advocate, Shri Manish Varma)

Versus

Union of India
Through its Secretary
Ministry of Health & Family Welfare
Room No.348, 'A' Wing,
Nirman Bhavan,
New Delhi 110 011.

... Respondents.

(By Advocate, Shri Rajinder Nischal)

: O R D E R (ORAL) :

Justice Permod Kohli, Chairman:

The applicant has prayed for quashing of the order dated
09.02.2016 (Annexure A-1) whereby he was ordered to be retired on

superannuation on 31.05.2016, with a further prayer to continue her in service till she attains the age of 65 years.

2. Briefly speaking, the facts of this OA are that the applicant who is a BDS was initially appointed in the General Duty Medical Officer (GDMO) cadre of the Central Govt. Health Service (CGHS) on 05.12.1984 as a Medical Officer. He was working as a Dental Surgeon under the Ministry of Health and Family Welfare. The applicant earned promotion up to the rank of Chief Medical Officer (CMO). Earlier, the age of retirement of Doctors working under Central Health Scheme (CHS) was 60 years. Vide impugned order dated 09.02.2016, the applicant was intimated that he is to retire on 31.05.2016 on attaining the age of superannuation, i.e., 60 years. Before the effective date of retirement, Government of India, Ministry of Health and Family Welfare, enhanced the age of retirement of the Specialists of Teaching, Non-Teaching and Public Health sub-cadres and General Duty Medical Officers of CHS to 65 years with immediate effect vide order dated 31.05.2016. The aforesaid order was followed by amendment in F. R. 56. However, the applicant was retired on 31.05.2016 in contravention to the Government Order dated 31.05.2016 as also F.R.56. He made a representation on 01.06.2016 to the Union Minister for Health and the Additional Secretary and Director General, Ministry of Health and Family Welfare seeking enhancement of age. This was followed by

representations dated 16.06.2016, 28.06.2016 and 11.09.2017 (Annexure A-14 colly). Receiving no response, the present OA has been filed seeking the reliefs as noticed hereinabove.

3. The issue of enhancement of age of superannuation of Doctors belonging to the disciplines of Dental Surgery, AYUSH and some other Doctors working with the Municipal Corporations was considered by this Tribunal in the case of *Dr. Santosh Kumar Sharma & Ors. vs. Union of India & Ors.* (OA No.2712/2016 and connected OAs) decided on 24.08.2017. 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.

Even though the case of Dental Surgeons was also dealt with in the aforesaid judgment, however, in a later judgment in case of *Dr. H. P. Singh vs. Union of India* [OA No.3321/2016 decided on 25.08.2017] specific order was passed with regard to the Dental Surgeons.

4. While issuing notice in the present OA, it was observed that the controversy is settled by this Tribunal. The respondents have, however, filed counter affidavit. Firstly, the Application is contested on the ground of limitation, and secondly referring to the judgments in *Dr. Santosh Kumar Sharma (supra)* and *Dr. H. P. Singh's case (supra)*, it is stated that both the judgments are in *personam* and the applicant is not entitled to seek benefit of the same. It is, however, admitted that the age of superannuation of Doctors belonging to CHS has been enhanced to 65 years vide Government order dated 31.05.2016 and subsequently by amending F. R. 56.

5. We have heard learned counsel for the parties.

6. Both the contentions of learned counsel for the respondents are liable to be rejected. Insofar as the question of limitation is

concerned, the applicant, on being retired w.e.f. 31.05.2016, immediately filed the representation on 01.06.2016 followed by various representations referred to above. These representations have not been decided by the respondents.

7. The applicant is entitled to a limitation of one year after the expiry of six months from the date of making of representation. Six months from the date of making of representation expired in November, 2016 and counting one year therefrom, limitation for filing the present OA would expire by the end of November, 2017. This Application has been filed on 30.10.2017 and is thus well within the period of limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985. Insofar as the second contention of learned counsel for the respondents is concerned, judgments in Dr. Santosh Sharma and Dr. H. P. Singh are not in *personam*. The directions issued in *Dr. Santosh Kumar Sharma's case* are as under:-

- (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."

In the matter of *Dr. H. P. Singh*, it has been held that the Dental Surgeons are part of CHS. The relevant observations are as under:-

"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.”

8. In view of the above circumstances, the applicant is entitled to enhancement of age of superannuation up to 65 years. Since the applicant was retired despite her entitlement to continue in service up to the age of 65 years, she was also paid the retiral benefits. In Dr. Santosh Kumar Sharma’s case (supra) it has been categorically held

that 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.

9. Thus, in view of the above, this Application is disposed of with the following directions:-

- (i) Order dated 09.02.2016 is hereby quashed and set aside.
- (ii) The applicant shall be deemed into service notwithstanding her retirement on 31.05.2016.
- (iii) She will be entitled to the salary as admissible to her under the Rules. Since the applicant has been paid retiral benefits, she would refund all retiral benefits received by her within a period of four weeks from the date of receipt of copy of this order. In the event, she fails to refund the retiral benefits she would be liable to pay interest at GPF rates to be paid to the Government till the amount is actually paid. Respondents are further directed to re-induct the applicant into service as CMO within a period of four weeks from the date of receipt of copy of this order.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/pj/