

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-4116/2014

New Delhi, this the 24th day of November, 2016.

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)**

1. Dr. Mukesh Chawla
S/o Shri Suraj Prakash Chawla
Age about 55 years.
2. Dr. Sameena Muzammil
D/o Dr. Zubair Hasan
Age about 54 years
3. Dr. Neena Mehan
D/o Sh. O.P. Bijesure
Age about 47 years
4. Dr. Mahabole K.G.
S/o Sh. Gopalrao Mahabole
Age about 49 years
5. Dr. Asha Chowdhry
D/o Sh. Harbir Singh
Age about 56 years
6. Dr. Vijay Kumar
S/o Sh. Goverdhan
Age about 56 years
7. Dr. Satya Jain
S/o Sh. Ved Prakash
Age about 51 years
8. Dr. Raj Bala
S/o Sh. C.S. Verma
Age about 56 years
9. Dr. Rajnish Chauhan
S/o Sh. C.L. Chauhan
Age about 56 years
10. Dr. Vipul Bhatnagar (D) through his wife Mrs. P.Bhatnagar
S/o Sh. K.P. Bhatnagar
Age about 57 years
11. Dr. Madhu Agarwal
D/o Sh. R.D. Gupta
Age about 61 years
All applicants C/o B.R. Sur Homeopathic

Medical College, Hospital and Research Center
Nanak Pura, New Delhi.

....Applicants

(By advocate: Shri R K Kapoor with Ms. Kheyali Sarkar)

Vs.

1. Govt. of NCT of Delhi
Through its Chief Secretary
5th Floor, Delhi Secretariate
A-Wing, IP Estate
New Delhi-110002.
2. Govt. of NCT Delhi
Through its Secretary (Health)
9th Floor, Delhi Secretariate
A-Wing, IP Estate
New Delhi-110002.
3. The Director
Ayush (Ayurveda, Yoga, Unani, Sidha and Homeopathy)
Directorate of Ayush, A and U
Tibia College, Karol Bagh, Delhi.
4. The Secretary
Central Council of Homeopathy
Jawaharlal Nehru Bhartiya Chikitsa and Homeopathy
Anusandhan Bhavan
No.61 to 65, Institutional Area
Opp. D-Block, Janak Puri
Delhi-110058.

...Respondents

(By Advocate: Shri N K Singh for Mrs. Avnish Ahlawat)

ORDER(ORAL)

Hon'ble Mr. Justice Permod Kohli

All the applicants joined Government Service in the Directorate of Health and Family Welfare, Delhi. They were later assigned the duty of teaching as Medical Officers. They earned promotions as Assistant Professors and thereafter as Reader (NFSG) on the same date i.e., 09.12.2013 on recommendations of UPSC. The grievance projected by applicants in the present OA is non grant of time bound (in-situ) promotion as Associate Professor/ Reader NFSG from the dates they completed two years of regular service in the cadre of Assistant

Professor/Reader by counting two years of regular service w.e.f 01.01.2002, meaning thereby they are claiming the benefit of in situ promotion from the date it became due to them.

2. The applicants have accordingly sought the following reliefs in the present OA:

"a. pass a direction against the respondents to grant respective in-situ promotions to all the applicants from Assistant Professor/Reader to Associate Professor/Reader NFSG (Non-function Selection Grade) from the date when they respectively completed 2 years of regular service in the cadre of Assistant Professor/Reader, by counting 2 years of regular service w.e.f. 01.01.2002 in the light of the Cabinet Decision dated 29.10.2001, r/w Rule 7(2) of the Rules namely Delhi Service (Teaching Cadre of Homeopathy) notified on 13.06.2012.

b. to grant all consequential benefits to the Applicants including the next in-situ promotion to the cadre of Professor after completion of 6 years of respective regular service as Associate Professor/Reader (NFSG) or on completion of 8 years of combined regular service in grade of Reader NFSG/Associate Professor & Reader/Assistant Professor with minimum 2 years of regular service in the grade of Reader NFSG/Associate Professor.

c. grant all other consequential benefits including monetary benefits, seniority (as finalized by the department vide Memorandum F.No. 2/162/2000/DISMH/Homeo/2882 dated 25/08/2011) and other incidental service benefits after affecting the promotion of the applicants from Assistant Professor/Reader to Associate Professor/Reader-NFSG by counting 2 years period w.e.f. 01.01.2002, and after affecting promotion to the cadre of Professor after completion of 6 years of respective regular service as Associate Professor/Reader (NFSG) or on completion of 8 years of combined regular service in grade of Reader NFSG/Associate Professor & Reader/Assistant Professor with minimum 2 years of regular service in the grade of Reader NFSG/Associate Professor."

3. To emphasise their claim, the applicants have relied upon the Note for Council of Ministers and Cabinet decision (Annexure A-2). Sh. Kapoor, learned counsel appearing on behalf of the applicants submits that the Doctors in Indian System of Medicine and Homeopathy were treated at par with Allopathic doctors for the grant of all service benefits. The relevant extracts from Note for Council of Ministers (Annexure A-1) is noticed hereunder:

"1. Keeping in view the overall policy of Govt. of India to recognize and encourage Indian Systems of Medicine and Homeopathy Govt. of Delhi had carved out full fledged

Directorate of ISM & Homeopathy in 1996 for the development and expansion of these systems of medicine.

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6.1 Time Bound Career Progression Scheme for Physicians of ISM & H

6.1.1 The first Time Bound Promotion from the level of Medical Officers (Rs.8000-13500) to the level of Sr. Medical Officers (Rs.8000-13500) may be given on completion of 4 years of regular service as Medical Officer (Rs. 8000-13500) on seniority-cum-fitness basis.

6.1.2 The Second Time Bound Promotion from the level of Sr. Medical Officer (Rs.1000-15200) to the level of Chief Medical Officer (Rs.12000-16500) may be given on completion of 6 years of regular service as Sr. Medical Officer or on completion of 10 years of combined regular service as Medical Officer (Rs.8000-13500) and Senior Medical Officer (Rs.10000-15200) out of which at least 2 years may be as Sr. Medical Officer on the basis of seniority-cum-fitness subject to their clearing the bench mark of Good with no Zone of selection and without linkage to vacancies.

6.1.3 The promotion from the level of Medical Officer to Senior Medical Officers and from the level of Senior Medical Officer to Chief Medical Officer may be in-situ 7 personal to the officers promoted and without linkage to vacancies.

6.1.4 15% of the Senior Duty posts in the grade of Senior Medical Officer (Rs.10000-15200) and Chief Medical Officer (Rs.12000-16500) may be converted to the post of Chief Medical Officer (Non-Functional Selection Grade Rs.14300-18300).

6.1.5 The placement of C.M.O. in the grade of Rs.14300-18300 may be on completion 14 years of regular service in the Group 'A' subject to overall good performance with at least two 'Very Good' assessments during the preceding 5 years.

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7.3 Homeopathic

a) Normally the entry in the teaching cadre may be at the level of Medical Officer (Teaching) (Homeopathy) in the scale of Rs.8000-13500. However, where senior posts are not filled up by way of promotion, the direct recruitments may be made at any senior level post in view of the exigencies for filling such posts. The RR's of the post of Medical Officer(Teaching) have since been notified.

(b) The first Time Bound Promotion from the level of M.O.(Teaching) (Rs.8000-13500) to the level of Assistant Professor (Rs.10000-15200) may be given on completion of 6 years of regular service as Medical Officer (Teaching) on seniority-cum-fitness basis.

(c) The second Time Bound Promotion from the level of Assistant Professor (Rs.10,000-15200) to the level of Associate Professor(Rs.12,000-16500) may be given on completion of 2 years of regular service as Assistant Professor on seniority-cum-fitness basis.

Note: However, the existing Medical Officer (Teaching) Homeopathy if promoted as Assistant Professor in the scale of Rs.10,000-15200+NPA as per the existing RR's of Assistant Professor (Homeopathy)(Allied) before the notification of this scheme, be promoted as Associate Professor in the pay scale of Rs.12,000-16500 + NPA after completion of 8 years of combined regular service as Medical Officer (Teaching) and Assistant Professor with minimum two years of regular service as Assistant Professor.

(d) The third Time Bound Promotion from the level of Associate Professor (Rs.12000-16500) to the level of Professor (Rs.14300-18300) may be given on completion of 6 years of regular service as Associate Professor or on completion of 8 years of combined regular service in the grade of Associate Professor & Assistant Professor with minimum 2 years of regular service in the grade of Associate Professor. The existing Professors in NHMC may be absorbed as Professor in the scale of Rs.14300-18300, since their total regular service as Assistant Professor and Professor exceeds 8 years.

15. The matter is placed before the Council of Ministers to consider the proposal and approve the following:

- i) Policy statement to say that Govt. of Delhi places Indian Systems of Medicine and Homeopathy at par with the Modern System of Medicine in all respects.
- ii) The proposal in Para 6 to 14 of this note for the Time Bound Career Progression Scheme of the Physicians and Teachers in ISM & H which shall ensure Assured Career Progression as shown in Annexure VI and VII and parity in any scales and allowance with Physicians and Teachers in Modern System of Medicine."

4. The aforesaid Cabinet note was considered by the Cabinet which culminated into Cabinet decision No. 663 dated 29.10.2001 and the decision was approved. Approval granted by the Cabinet is reproduced hereunder:

“Government of National Capital Territory of Delhi
General Administration Department
Delhi Secretariat, I.P. Estate, New Delhi 110002
Cabinet Decision No.663 dated 29.10.2001

Sub: Time bound Career Progression Scheme for Physicians and Teachers of ISM & H.

Ref: No.2/194/99/NHMC/ dated NIL

The proposal was considered and approved. It was decided that as proposed in para 15(i), the facilities for the Medical Officers would be

at par with the Govt. of India in all respects. As far as the teaching staff is concerned, the facilities would be at par with those to the teaching institutions of Modern System of Medicine(Allopathic) in the Govt. of Delhi.

Sd/-
(P.S. Bhatnagar)
SECRETARY TO THE CABINET"

5. Respondents framed recruitment rules – "Delhi Health Services Rules of General Duty Medical Officer (Homeopathy)" in exercise of the powers conferred under Proviso to Article 309 of the Constitution of India vide notification dated 27.06.2007. Rule 7 deals with the initial constitution of service. The same is quoted hereunder:

"7. Initial Constitution of the Service (1) All the officers appointed under the Delhi Health Services of General Duty Medical Officer (Homeopathy). Assistant Director (Homeopathy), Assistant Director (Homeopathy) and Deputy Director (Homeopathy) on or before the commencement of these rules and they shall be deemed to have been appointed under these rules and they shall be members of the service in the respective grades.

2. The regular continuous service of officers referred to in Sub-rule(i) before the commencement of these rules shall count for the purpose of promotion, qualifying service for promotion, confirmation and pension in the service."

6. These rules are for non-teaching wing, i.e. General Duty Medical Officer (Homeopathy) as is evident from Rule 1 of the notification.

7. Admittedly, there are two wings of Homeopathy, Medical Officer - Teaching and Non-Teaching. So far the teaching wing is concerned, separate rules were framed under proviso to Article 309 vide notification dated 13.06.2012, known as Delhi Health Services (Teaching Cadre of Homeopathy). In these rules also, similar rule 7 is incorporated for the initial constitution of service.

The said rule is reproduced hereunder:

"7. -(1) All the officers appointed under the Delhi Health Service of the Teaching Cadre of Homeopathy on or before the commencement of these rules, shall be deemed to have been appointed under these rules and they shall be members of the service in the respective grades.

(2) The regular continuous service of officers referred to in sub-rule (1) before the commencement of these rules shall count for the purpose of promotion, qualifying service for promotion, confirmation and pension in the service.

(a) the existing Medical Officer (Teaching) of Homeopathy shall be assessed by the Commission on the basis of qualifications prescribed for the direct recruitment for the post of Lecturer (Allied Medical Subjects and Homeopathic Subjects) as given in Schedule-V for placing them in the re-designated post of Lecturers (Allied Medical Subjects and Homeopathic subjects) in the initial constitution.

(b) The Lecturer (Allied Medical Subjects and Homeopathic Subjects) recruited by Commission shall be deemed to be absorbed as members of service.

(c) The existing Assistant Professors (Allied Medical Subjects and Homeopathic Subjects) shall be assessed by the Commission on the basis of qualification prescribed for the post of Reader (Allied Medical Subjects and Homeopathic Subjects) in Central Council of Homeopathy (Minimum Standards of Education) Regulations, 1983 (as amended up to September, 2002) and mentioned in Schedule – VI, for placing them in the re-designated post of Reader (Allied Medical Subjects and Homeopathic Subjects) in the initial constitution.

The existing Professor working in the pay scale of Rs. 10000-15200 (PR) revised to Rs. 15600-39100+GP Rs. 6600 shall be assessed by the Commission for placing them in the upgraded pay scale of Rs. 37400-67000+GP Rs. 8700 at the initial constitution on completion of 10 years regular service in the grade. If assessed suitable, h/she shall be deemed to have been appointed to the post at the initial constitution. If assessed "not suitable", for appointment to the upgraded post he/she shall continue to be in the pre-revised scale of Rs. 10000-15200(Pre-Revised) and his case would be reviewed every year.

(e) The existing Principal, working in the grade of Rs. 12000-16500 (Pre-Revised)/15600-39100+7600(GP) [Revised] shall be assessed by the Commission for placing them in the upgraded scale of Rs. 37,400-67,000+10,000 (GP) at the initial constitution on completion of 8 years regular service in the grade. If assessed suitable, he/she shall be deemed to have been appointed to the post at the initial constitution. If assessed "not suitable", for appointment to the upgraded post he/she shall continue to be in the pre-revised scale of Rs. 12000-16500 (Pre-Revised) / 15600-39100+7600(GP) [Revised] and their case would be reviewed every year."

8. Vide order dated 26.11.2007, Senior Medical Officer (Homeopathy) working in the pay scale of 10000-325-15200 + NPA were promoted to the post of Chief Medical Officer (Homeopathy) in the pay scale 12000-375-16500 +NPA w.e.f. 01.01.2006. In fact, this time bound promotion was granted to them from the date they acquired eligibility for time bound promotion. Insofar as the teaching wing of Homeopathy is concerned, the applicants have been granted the benefit of time bound (*in situ*) promotion to the post of Reader (Homeopathy Subjects/Allied Medical Subjects) working in various Homeopathic Medical Colleges and Hospitals in the pay scale of Rs. 15600-39100 + 6600

(Grade Pay) + NPA + Usual Allowances to the post of Reader (NFSG) (Homeopathic Subjects/Allied Medical Subjects) in the pay scale of Rs. 15600-39100 + 7600 (Grade Pay) + NPA + Usual Allowances from the date of assumption of charge vide order dated 09.12.2013.

9. The grievance of the applicants is that in case of non-teaching Homeopathic General Duty Medical Officer, the benefit of time bound promotion has been allowed from the date of acquiring eligibility for time bound promotion, however, in case of teaching faculty who are similarly situated, benefit has been denied from the date of acquiring eligibility and vide order dated 09.12.2013 they have been granted benefit of in situ time bound promotion from the date of assumption of charge. It is, accordingly, pleaded that there has been hostile treatment to the applicants and they have been discriminated against for the purposes of grant of similar benefit as granted to General Duty Medical Officers of non-teaching wing. The applicants have accordingly pleaded contravention of mandate of Articles 14 and 16 of the Constitution of India.

10. Sh. N.K. Singh, learned counsel appearing on behalf of the respondents has however, resisted the claim of the applicants. According to Sh. Singh, the benefit has been allowed to the applicants prospectively in view of the Office Memorandum dated 01.01.2002 (Annexure R-3 with counter affidavit). Reliance is placed upon following stipulation in the memorandum

"These orders shall take effect prospectively after the framing of relevant Rules/Recruitment Rules in view of this Cabined decision in consultation with Union Public Service Commission after taking necessary approval of Lt. Governor, Delhi."

In view of the above stipulation, it is argued by Sh. Singh that recruitment rules for teaching wing were framed vide notification dated 13.06.2012 and thus in terms of the aforesaid OM, the applicants who belong to the teaching wing of

Homeopathic Medical Services are not entitled to the benefit of time bound promotion from the date they acquired eligibility.

11. We have heard learned counsel for the parties at length and examined the record.

12. It is not in dispute that vide the Cabinet note dated 29.10.2001, teaching faculty was treated at par with non-teaching medical officers even for the Modern System of Medicine (Allopathic), as also the Indian System of Medicine (Homeopathy). As noticed herein above, vide Cabinet decision No. 663 dated 29.10.2001, the Cabinet note was approved. Vide aforesaid Cabinet decision the Physicians and Teachers in Homeopathy were treated at par with the Modern System of Medicine in the Govt. of Delhi. The time bound promotion has no relation with framing of Recruitment Rules. As a matter of fact, the time bound promotion is a scheme to alleviate stagnation of the Govt. servants and for grant of financial upgradation from time to time in accordance with Scheme. The Cabinet decision referred to herein above merely provide that benefit of time bound promotion shall be equally available to the Physicians as also the teaching staff in Indian System of Homeopathy. Office Memorandum dated 01.01.2002 has been issued pursuant to the aforesaid Cabinet decision no. 663 dated 29.10.2001. Para 2 of the office memorandum reads as under:

"Now the Govt. of NCT of Delhi vide Cabinet Decision No. 663 dated 29/10/2001 has decided to provide the Time Bound Career Progression Scheme for the Teachers of Indian Systems of Medicine and Homeopathy working under the Directorate of Indian Systems of Medicine & Homeopathy at par with the teachers working in the institutions of Modern System of Medicine in Govt. of Delhi as per details given hereunder ..."

This OM has in fact adopted the Cabinet Decision in its entirety as is evident from the above quoted Para of the aforesaid office memo which deals with Homeopathy. However, the stipulation at the end of the aforesaid memo inter

alia grants benefits of time bound promotion from the framing of the relevant recruitment rules, i.e., prospectively, which is in fact in contravention to the Cabinet Decision itself. The OM seems to have been issued for the implementation of the Cabinet decision, however, the aforesaid condition itself contravenes the Cabinet Decision. The Cabinet is the highest decision making authority of the Govt. in terms of its rules of business which are framed under Article 166 of the Constitution of India. Once the highest decision making authority has taken a decision, it does not permit any authority to nullify the same by incorporating any condition to the contrary. Otherwise also, the aforesaid stipulation is clearly discriminatory in nature between the teaching and non teaching Medical Officers of Homeopathy wing. The same is thus not sustainable in law and needs to be ignored even if not specifically challenged.

13. Sh. Singh, learned counsel appearing for the respondents submits that claim of the applicants is barred by time as they are seeking benefit w.e.f 2002 at par with the non teaching wing of Homeopathy whereas this petition has been filed in November, 2014. We reject the contention for following reasons:

- 1) that the offending condition of the OM which deprives the applicants of the benefit though issued on 01.01.2002 but enforced after framing of recruitment rules dated 13.06.2012 vide the impugned order dated 09.12.2013.
- 2) Framing of Recruitment Rules is not within the control of the Govt. servant. If the authorities have taken time for framing of recruitment rules, the applicants cannot be punished for the same. Admittedly, the two sets of Recruitment Rules framed i.e, one for the non-teaching wing in the year 2007 and for teaching wing in the year 2012 contain similar provisions. Rule 7 in both Recruitment Rules provide for the initial constitution of service. All those doctors who were serving in the Department on any post are deemed to be members of service by virtue

of Rule 7 and thus merely because two sets of Recruitment Rules were framed at different times, the members of the service cannot be deprived of their service rights which are analogous in nature on that basis.

3) Otherwise also, the scheme of time bound promotion is in fact in-situ promotion and the very object of the scheme is to grant the benefit of financial upgradation from the date a person acquires eligibility under the scheme. Any delay in grant of such benefit despite eligibility itself is arbitrary in nature and is thus violative of Article 14 of the Constitution of India. Under a similar scheme, which is known as Flexible Complementing Scheme (FCS) Scheme, the issue was considered by this Tribunal in case of **Sh. S.K. Murthi Vs. Union of India & Ors.** (OA No. 820/2003, decided on 03.12.2003). The Tribunal declined relief to the applicant. However, in Writ Petition (WP (C) 14263/2004) filed before the Hon'ble High Court, the judgment of the Tribunal was set aside and direction was issued by the Hon'ble High Court to promote the petitioner under FCS with effect from the date of eligibility. The Hon'ble High Court in its judgment dated 05.10.2010 held as under:

"9. Under the circumstances we hold in favour of the petitioner and direct that the benefit granted to the petitioner be reckoned with effect from 1.1.1999 instead of 19.9.2000. Arrears would be paid within 12 weeks from today but without any interest."

The aforesaid judgment was challenged by the Union of India before Hon'ble Supreme Court in SLP (C) No. 13133/2011 and while dismissing the SLP vide order dated 02.05.2011, Hon'ble Supreme Court directed as under:

"Since the time fixed by the High Court for compliance of the direction given by it has already expired, we direct the petitioners to do the needful within four weeks from today. Similar order shall be passed for all similarly situated persons despite the fact that they may not have approached the High Court questioning the order passed by the Tribunal. This direction is being given to avoid further litigation in the matter."

Not only judgment of the Delhi High Court was approved, further directions were issued that similar order shall be passed for all similarly situated persons despite the fact that they may not have approached the court questioning the order. The FCS Scheme and the time bound promotion scheme are almost analogous in nature and thus under such circumstances question of delay and laches would not come in the way of the applicants.

14. This OA is accordingly allowed. The OM dated 09.12.2013 to the extent it restricts grant of time bound promotion from the date of assumption of charge will not operate against the applicants. Further direction is issued to the respondents to grant the benefit of financial upgradation i.e, time bound promotion to the post of Reader (NFSG) as allowed vide order dated 09.12.2013 from the date they acquired eligibility, with all consequential benefits within three months from the date of receipt of certified copy of this order. No order as to costs.

(Shekhar Agarwal)
Member (A)

/ns/

(Justice Permod Kohli)
Chairman