

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**O.A. No.1819/2018
M.A. No.2029/2018**

**Reserved On:08.05.2018
Pronounced on:14.05.2018**

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

1. Dr. B.K. Dey
S/o Late Bhaskar Kumar Dey
Aged 61 years, Group 'A',
45, Harit Niketan,
West Enclave, Pitampura,
New Delhi.
2. Delhi Administration Doctors Welfare Association,
Through its President,
Dr. Amareshwar Narayan,
45, Harit Niketan,
West Enclave, Pitampura,
New Delhi. Applicants

(By Advocates: Shri V.K. Garg, Sr. Counsel with Shri Sagar Saxena,
Ms. Noopur Dubey and Ms. Shrishti Singh)

Versus

1. Union of India
Through the Secretary
Ministry of Health and Family Welfare,
Government of India,
Nirman Bhawan,
New Delhi.
2. Ministry of Personnel Public Grievances
And Pensions, Govt. of India,
Department of Personnel & Training,
Through its Secretary,
North Block,
New Delhi.
3. Department of Health & Family Welfare,

Government of National Capital Territory
of Delhi,
Through its Principal Secretary (H&FW),
Level-9, Delhi Secretariat, IP Estate,
New Delhi-110002.

4. Maharishi Valmiki Hospital (GNCTD),
Through its Medical Superintendent,
Pooth Khurd,
Delhi-110039. ... Respondents

(By Advocate: Shri Manish Kumar for Respondents No.1 & 2
Shri R.N. Singh with Shri Vaibhav Pratap Singh for
Respondents No.3 and 4)

ORDER

By Mr. V. Ajay Kumar, Member (J)

MA No.2029/2018

M.A. No. 2029/2018 for joining together is allowed.

2. Heard Shri V.K. Garg, Sr. Counsel with Shri Sagar Saxema, Ms. Noopur Dubey and Ms. Shrishti Singh for the applicants, Shri Manish Kumar for Respondents No.1 & 2, Shri R.N. Singh with Shri Vaibhav Pratap Singh for Respondents No.3 & 4 and perused the pleadings on record.

3. The first applicant is a medical doctor in the CMO (SAG) Grade and was holding the post of Deputy Medical Superintendent in the 4th respondent-Mararishi Valmiki Hospital, which is under the control of the third respondent-Government of NCT of Delhi. The 2nd applicant is Delhi Administration Doctors Welfare Association represented through its President, Dr. Amareshwar Narayan

(Registration No.S-12851). The OA has been filed seeking the following reliefs:-

"(i) Quash and set aside office order dated 05.05.2018 relieving the applicant No.1 from all Administrative posts w.e.f. 07.05.2018 on account of applicant No.1 attaining the age of 62 years.

(ii) Quash and set aside office memorandum dated 19.07.2016 insofar as it permits divesting the doctors of their administrative position held by them beyond the age of 62 years.

(iii) Direct the respondents to delete/modify the above provisions and permit the doctors including applicant No.1 to continue on their respective administrative positions with all powers, functions and duties till the age of 65 years with all consequences attached thereof.

(iv) Call for the record leading to impugned amendment including the deliberations between respondents No.1 and 2 and set aside amendment by way of insertion of proviso to FR 56 (bb) vide notification dated 22.03.2017 & 05.01.2018.

(v) Any other relief which this Hon'ble Tribunal may deem fit and appropriate in the circumstances of the case and in the interest of justice".

4. In short, the applicants are seeking for quashing of the Annexure A-3 Notification in GSR 279 (E) dated 22.03.2017, insofar as it permits divesting the doctors of their administrative position held by them beyond the age of 62 years, as their main prayer.

5. The Ist respondent-Union of India by way of Annexure A-7 Notification of the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) in GSR 567 (E) dated 31.05.2016 which was issued under Article 309 of the Constitution of India, enhanced the superannuation age of General Duty Medical Officers and Specialists included in Teaching, Non-

Teaching and Public Health sub-cadres of Central Health Service (CHS) from 62 years to 65 years by amending Rule 56 (bb) of Fundamental Rules, 1922. However, vide the impugned Annexure A-2 Office Memorandum dated 19.07.2016 the respondent-Union of India issued orders that “CHS officers of Non-Teaching Specialist, Public Health Specialist and GDMO sub-cadres of CHS will hold the administrative posts till the date of attaining the age of 62 years and thereafter their services would be placed in Non-Administrative positions” with the designations mentioned therein and that “the officers of Teaching Specialist sub-cadre of CHS will continue to hold Administrative positions till they attain the age of 62 years as provided in the Ministry’s OM dated 24.02.2012”. Annexure to the said OM dated 19.07.2016 contains the list of administrative positions and the same reads as under:-

- “i. All posts belonging to CHS in the Secretariat of Ministry of Health and Family Welfare.
- ii. All posts belonging to CHS in Dte. General of Health Services, Nirman Bhavan, New Delhi.
- iii. All posts belonging to CHS in Dte. Central Government Health Scheme, Nirman Bhavan.
- iv. Dean
- v. Director
- vi. Principal
- vii. Medical Superintendent
- viii. Addl. Medical Superintendent
- ix. Head of Department of respective speciality

- x. Senior Regional Director in Regional Office for Health & Family Welfare.
- xi. Additional Director, Central Government Health Scheme.
- xii. Additional Director in various CHS participating institutes.
- xiii. In Charge, CGHS Polyclinics".

Since Annexure A-2 was only an executive instruction and to give the same a statutory status, the Union of India issued Annexure A-3 Notification in GSR 279 (E) dated 22.03.2017 reiterating the contents of the OM dated 19.07.2016. The Union of India, vide the Annexure A-4 Notification in GSR 27 (E) dated 05.01.218, extended the enhancement of age of superannuation to the doctors of Central Armed Police Forces and Assam Rifles, however, held that the said doctors in Central Armed Police Forces and Assam Rifles shall hold the administrative posts till the date of attaining the age of 65 years.

6. One Dr. Jagdish Prasad, who was holding the post of Director General of Health Services, filed OA No.494/2017 challenging the Office Memorandum dated 19.07.2016 and the Notification dated 22.03.2017 and sought for a consequential direction to allow him to continue up to the age of 65 years as Director General of Health Services with all administrative and statutory powers along with all consequences. After hearing both sides, this Tribunal, by its judgment dated 05.04.2018, allowed the OA and the relevant paragraphs of the said judgment read as under:-

“.....The applicant accordingly filed amended OA challenging the *vires* of notification dated 22.03.2017. Relief claimed in the present OA after the amendment is as under:

“8.1 Quash and set aside Office Memorandum dated 19.7.2016 insofar as it divests the applicant of his administrative position and nomenclature him on the designation of Principal Consultant upto 65 years of age vide Annexure A-1;

8.2 Direct the respondents to delete/modify the above provisions and the applicant be continued as DGHS with all powers, functions and duties till the age of 65 years with all consequences;

8.3 Any other relief which this Hon’ble Tribunal may deem fit and appropriate in the circumstances of the case; and

8.4 Call for the records leading to impugned amendment including the deliberations between respondents No.1 and 2 and set aside as illegal, arbitrary, mala fide and ultra vires, amendment by way of insertion of proviso to FR 56(bb) vide Notification dated 22.3.2017 (Annexure A-1A) and further direct to allow the applicant to continue upto the age of 65 years as DGHS with all administrative and statutory powers along with all consequences.”

6. The applicant seeks to challenge the constitutionality, legality and validity of the office memorandum dated 19.07.2016 as also the notification dated 22.03.2017 inserting the impugned proviso to FR 56(bb) on the following grounds:

(i) That the office memorandum dated 19.07.2016 supplants FR 56(bb), the said office memorandum being only in the nature of executive instructions is not sustainable in law.

(ii) That the amendment to FR 56(bb) vide notification dated 22.03.2017 introducing the impugned proviso thereto has been carried out without the approval of the Cabinet, and is thus illegal.

(iii) That the enhancement of the age to 65 years vide FR 56(bb) creates a vested right with effect from 31.05.2016 to continue up to the age of 65 years; such right carries with it the status, the powers and the privileges attached to the post. The office memorandum dated 19.07.2016 and the subsequent amendment vide notification dated 22.03.2017 take

away such vested right, and are illegal, arbitrary and unconstitutional.

(iv) That the amendment, i.e., notification dated 22.03.2017 is violative of Articles 14, 16 and 311(2) of the Constitution of India, as it amounts to reduction in rank/status of the applicant.

(v) That there is no post equivalent to the rank/status of the Director General of Health Services where the applicant can be posted without reducing his rank/status.

(vi) That the amendment is also violative of CHS recruitment rules whereunder the senior-most HAG officer is to be appointed as the Director General. By virtue of this amendment, the applicant would be made to work under his junior officer who will exercise administrative control over him, which is contrary to the service jurisprudence.

(vii) That the amendment dated 22.03.2017 is only prospective in nature and would be applicable only from the date it came into operation. The applicant attained the age of 62 years prior to the said amendment and hence this amendment would not be attracted *qua* the applicant to deny him the administrative position.

XXX XXX XXX

43. The respondent in its wisdom chose to notify circular dated 19.07.2016 followed by statutory amendment dated 22.03.2017. It cannot be disputed that this is a policy decision of the government. Even though, there are *prima facie* observations that the policy does not carry any rationale for depriving the doctors who attain the age of 62 years from discharging their administrative functions, none the less, the Courts are to be reluctant in interfering in the policy matters. It is not in dispute that the central government had the legislative competence to amend the Fundamental Rules. Once, the legislative competence is conceded, there is a presumption of constitutionality of a statute. Even though, there are some deficiencies, interference in the statutory provisions is not desired.....”

After considering the decision in **State of Karnataka and Another Vs. Hansa Corporation (1980) 4 SCC 697** and **Hinsa Virodhak Sangh vs. Mirzapur Moti Kuresh Jamat and Others (2008) 5 SCC 33**, it was held that:

“Thus, in view of the law laid down by the Hon’ble Supreme Court in the aforesaid judgments, we refrain from striking down the proviso introduced vide amendment dated 22.03.2017. Even, while we have not interfered in the proviso introduced vide amendment dated 22.03.2017, none the less, the applicant cannot be deprived of his right to continue on the post unless an equivalent post of his rank and status is created under the recruitment rules in accordance with the mandate of rules 3 & 4 of Recruitment Rules. Shifting to a non-existent ex-cadre post which takes away all the existing rights, power, authority, status and privileges would be violative of Article 311 (2) of the Constitution of India.

44. In the ultimate analysis of the factual and legal aspects, this OA is allowed. The respondents are directed to allow the applicant to continue to hold the post of Director General, Health Services till he attains the age of 65 years or till an equivalent post of his status, rank and privileges is created in accordance with the mandate of Recruitment Rules”.

7. The aforesaid decision in **Dr. Jagdish Prasad** was accepted by both the parties in the OA and that no Writ Petition is filed challenging the said judgment till date and that the applicant in the OA, i.e., Dr. Jagdish Prasad was continued as Director General of Health Services till he attains the age of superannuation, i.e., 65 years by the respondent-Union of India, in compliance of the said judgment.

8. Shri V.K. Garg, Sr. Counsel appearing for the applicants, while not disputing the fact that the impugned Annexure A-2 Office Memorandum dated 19.07.2016 and the impugned Annexure A-3 Notification of GSR 279 (E) dated 22.03.2017 were challenged in OA No.494/2017 of **Dr. Jagidsh Prasad’s case** (supra), however, by drawing our attention to the observation made by this Tribunal in paragraph 43 of the judgment that “we refrain from striking down

the proviso introduced vide amendment dated 22.03.2017”, submits that this Tribunal had not upheld the validity of the Notification dated 22.03.2017 and on the other hand kept the question open by not giving any finding on the validity or otherwise of the impugned orders, and hence the applicants in the instant OA can question the very same Notification dated 22.03.2017 and this Tribunal is duty bound to examine the validity of the said Notification once again. The learned Sr. counsel further submits that since the OA No. 494/2017 filed by **Dr. Jagdish Prasad** (supra) was allowed by holding that the applicant therein “cannot be deprived of his right to continue on the post unless an equivalent post of his rank and status is created under the Recruitment Rules in accordance with the mandate of Rules 3 & 4 of Recruitment Rules and shifting to a non-existent ex-cadre post which takes away all the existing rights, power, authority, status and privileges would be violative of Article 311(2) of the Constitution of India” and directed the respondents “to allow him to continue to hold the post of Director General of Health Services till he attains the age of 65 years or till an equivalent status, rank and privileges is created in accordance with the mandate of the Recruitment Rules” and since the first applicant was holding the post of Deputy Medical Superintendent of the 4th respondent Hospital, he is also entitled for extension of the same benefit conferred to the post of Director General of Health Services

by this Tribunal, as the respondents have not challenged even the said part of the said judgment and, in fact, complied with the same.

9. Learned Sr. counsel appearing for the applicants further submits that in identical circumstances, certain other doctors, who are similarly placed like the applicant No.1 herein, also filed different OAs challenging the validity of the Notification dated 22.03.2017 and this Tribunal issued notices and also granted interim orders and hence, this Tribunal may issue notices in the instant OA also and may decide whether in **Dr. Jagdish Prasad** (supra), the validity of the Notification dated 22.03.2017 was upheld or not after pleadings are complete and after hearing both sides only. Issuance of notices and granting of interim orders in certain identical OAs does not preclude us from examining the principles already decided and the binding nature of a judgment of a Coordinate Bench of this Tribunal in **Dr. Jagdish Prasad** (supra) and to take a final view on the admissibility of the instant OA at the threshold, particularly when both sides are placing heavy reliance on the same judgment, i.e., **Dr. Jagdish Prasad** (supra) in support of their respective submissions for admission and dismissal of the same.

10. On the other hand, Shri Manish Kumar, learned counsel appearing for respondents No.1 & 2 and Shri R.N. Singh, learned counsel appearing for respondents No. 3 & 4 would oppose all the

contentions of the applicants by submitting that the validity of the impugned Annexure A-3 Notification in GSR 279 (E) dated 22.03.2017 was upheld by this Tribunal in **Dr. Jagdish Prasad** (supra) in unambiguous terms and hence no second challenge to the very same Notification dated 22.03.2017 is maintainable through the present OA and hence the same is liable to be dismissed on this sole ground itself.

11. The learned counsels for the respondents while seeking time to file counter would further submit that the impugned Annexure A-1 dated 05.05.2018 where under the first applicant was relieved from the administrative post of Deputy Medical Superintendent, which he was holding, is a consequential order to the Notification dated 22.03.2017 only and hence the same cannot be interfered with, as the validity of Notification dated 22.03.2017, itself was upheld. Further, since the applicant No.1 was already relieved with effect from 07.05.2018, the prayer for interim stay of the impugned Office Order Annexure A-1 dated 05.05.2018 relieving him from the post of Deputy Medical Superintendent cannot be granted. It is also submitted that the post of Deputy Medical Superintendent cannot be compared with the post of Director General of Health Services because the post of Deputy Medical Superintendent is a simple administrative post, whereas the post of Director General of Health Services carries various powers and responsibilities attached with the same.

12. In the backdrop of the aforesaid rival submissions, we have carefully examined the judgment of this Tribunal in **Dr. Jagdish Prasad** (supra). We fully agree with the submission made by Shri R.N. Singh, learned counsel for the respondents insofar as this Tribunal in **Dr. Jagdish Prasad** (supra) rejected the challenge to the Notification in GSR 279 (E) dated 22.03.2017 and upheld the same after detailed discussion and reasoning. We cannot accept the submission made by the learned Sr. counsel Shri V.K. Garg, appearing for the applicants that the observation of this Tribunal in para 43 that “we refrain from striking down the proviso introduced vide amendment dated 22.03.2017” is to be construed that the question of validity of the Notification dated 22.03.2017 was kept open and can be adjudicated, independently, once again.

13. However, it is to be seen that this Tribunal in **Dr. Jagdish Prasad** (supra), while upholding the validity of the Notification dated 22.03.2017 noticing that the post of Director General of Health Services was not a simple administrative post and that the same has territorial jurisdiction all over the country, having powers and responsibilities that of a Head of a Department, which, inter alia, included administration of the whole department, and a promotional post, allowed the OA and directed the respondents to allow the applicant therein, i.e., **Dr. Jagdish Prasad** (supra) to continue to hold the post of Director General of Health Services till

he attains the age of 65 years or till an equivalent post of his status, rank and privileges is created in accordance with the mandate of Recruitment Rules. It is seen that the applicant in the instant OA has made a representation dated 11.04.2018 (Annexure A-5), i.e., sufficiently before he attains the age of 62 years seeking extension of the benefit of the judgment in **Dr. Jagdish Prasad** (supra), to him also, but the respondents without considering the said representation, passed the Annexure A-1 Office Order dated 05.05.2018 relieving the applicant No.1 from the post of Deputy Medical Superintendent with effect from 07.05.2018.

14. In our considered view, once, this Tribunal, in **Dr. Jagdish Prasad** (supra), even after upholding the validity of the Notification dated 22.03.2017, i.e., divesting the doctors of their administrative position held by them beyond the age of 62 years, distinguished the post of DGHS, which was one of the posts mentioned in the Annexure to the Notification dated 22.03.2017, directed the respondents to continue **Dr. Jagdish Prasad** till he attains the age of 65 years and the respondents complied with the said direction, they were under obligation to consider the claim/representation of the applicant in the instant OA, that he is also entitled for extension of the said judgment in **Dr. Jagdish Prasad**, on merits, before relieving him from his administrative post of Deputy Medical Superintendent. In view of our finding that the validity of the

Notification dated 22.03.2017 was already upheld in **Dr. Jagdish Prasad** (supra), the instant OA, also filed challenging the very same Notification dated 22.03.2017, does not deserve admission. Since the Notification dated 05.01.2018, is only a consequential Notification and a reiteration of Notification dated 22.03.2017 except exempting the doctors of Central Armed Police Forces and Assam Rifles, and since main Notification dated 22.03.2017 was already upheld, challenge to the same is also not maintainable.

15. However, in view of the non-consideration of the applicant No.1's claim for extension of the benefit of **Dr. Jagdish Prasad** (supra) to him, the OA deserves to be disposed of with a direction to the respondents to pass a speaking order.

16. In the circumstances and for the aforesaid reasons, the OA is disposed of by directing the respondents to consider the representation dated 11.04.2018 of the applicant No.1 keeping in view the decision of this Tribunal in **Dr. Jagdish Prasad Vs. Union of India and Others** in **OA No.494/2017** decided on 05.04.2018 and to pass appropriate speaking and reasoned orders in accordance with law, within a period of 15 days from the date of receipt of a copy of this order. Till then, the respondents shall maintain status quo, qua the applicant No.1, obtaining as on the

date of issuance of Annexure A-1 order dated 05.05.2018. No costs.

Order by **DASTI.**

(NITA CHOWDHURY)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

RKS