

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

OA No. 38 of 2013

Date of Reserve:16.04.2019

Date of Order:14.05.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Dr. Bishnu Prasad Parida, aged about 52 years, S/o. Late LaxmidharParida, Deputy Chief Medical Director (Technical Adviser), East Coast Railway, Bhubaneswar, Dist-Khurda. Residing at B/60, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda.

...Applicant

By the Advocate (s)-M/s. S. Patra, P.K. Mohapatra, A. Panda, S.J. Mohanty, D.D. Sahu

-VERSUS-

1. Union of India represented through the General Manager, East Coast Railways, Chandrasekharpur, Bhubaneswar, Dist- Khurda.
2. Secretary, Railway Board, Rail Bhawan, New Delhi.
3. Director, Pay Commission, Railway Board, Rail Bhawan, New Delhi.
4. Deputy Director, Pay Commission-V, Railway Board, Rail Bhawan, New Delhi.
5. Member, Staff, Railway Board, Rail Bhawan, New Delhi.

.....Respondents

By the Advocate(s)-Mr. T. Rath

O R D E R

PER MR.GOKUL CHANDRA PATI, MEMBER(A) :-

This Original Application (in short OA) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking following relief:--

“A.) Order under Annexure-A/6 be quashed and be declared ultra vires as it dilutes the parameters fixed under Annexure-A/5 for promotion/upgradation to the post of Sr. DMO (SAG) in the Grade Pay of Rs.10,000/- in PB-4 in a discriminatory manner thereby defeating the spirit of Dynamic Assured Career Progression Scheme.

- B.) Order under Annexure-A/9 be quashed after declaring the same as illegal.
- C.) Respondents be directed to upgrade Applicant as Sr. DMO (SAG) w.e.f 7.1.09.
- D.) And pass any other order/orders as would be deemed fit and proper under the circumstances”.

2. The applicant was appointed initially on 11.08.1987 by Railway Board as Assistant Divisional Medical Officer (in short ADMO) in Group-A service and was posted to the post of Divisional Medical Officer and then as Senior Divisional Medical Officer (in short Sr. DMO) w.e.f. 19.01.2005 in the Grade Pay of Rs.7600/- w.e.f. 19.01.2009, he was promoted as Sr. D.M.O. (Non-functional Selection Grade) with Grade Pay (in short GP) of Rs.8700/- in PB-4 in pursuance to the Dynamic Assured Career Progression (in short DACP) Scheme in accordance with the Railway Board's order dated 07.01.2009 (Annexure-A/5). The applicant claims that as per the order dated 07.01.2009, he is entitled to be upgraded to the level of the GP of Rs.10,000/- in PB-4 since he has already completed 20 years of service. Although the applicant submitted a representation dated 20.12.2010 (Annexure-A/7), no action was taken in the matter by the respondents.

3. The subsequent clarification was issued vide order dated 24.08.2009 (Annexure-A/6) by the Railway Board, which states as under:-

“Ministry of Health & Family welfare vide their OM No.A.45012/2/2008-CHS.V. dated 21.07.2009 have issued certain clarification on the above subject in consultation with the D/o Expenditure.

2. Pursuant to the above and in continuation to the Board's letter of even number dated 7.1.2009, it is clarified that it was not the intention to straightway grant Senior Administrative Grade (Grade Pay of Rs.10,000 in PB-4) to an individual on mere completion of 20 years of service even if he was still a Medical Officer or Sr. Medical Officer.

In fact, for being eligible for upgradation under DACP Scheme, a doctor has to render minimum qualifying service in the immediate lower grade as prescribed in the letter dated 07.01.09 *ibid*. Therefore, the question of direct promotion under DACP to the senior Administrative Grade from the grade Pays of Rs.5400,6600 in the Pay Band-3 does not arise.

3. It has, therefore, been decided that at the time of initial implementation of the Scheme(i.e. as on 07.01.2009, the date of issue of the said letter), depending on the length of Service rendered by a Medical Doctor, he can be directly placed in the grade corresponding to his length of services prescribed by the letter dated 7.1.2009 subject to the condition that such placement will be done only upto NFSG Scale i.e.. Grade Pay of Rs.8700/- in the Pay Band-4.”

4. The applicant is aggrieved by the clarifications issued vide the order dated 24.08.2009 and he states that it has no rational since a Doctor with more than 20 years of service in GP less than Rs.8700/- can not be upgraded the Non-functional Senior Administrative Grade (in short (SAG) with the GP of Rs.10,000/-, but a Doctor who was promoted or upgraded on 5.1.2009 (Prior to 7.1.2009) to the GP of Rs.8700/- and with more than 20 years of service will be upgraded to the level of SAG. It is also stated in the O.A. that introduction of a cut off dated (i.e. 7.1.2009) for the DACP Scheme is without any rational nexus, as stated in the O.A. (Para 4.3).

5. When no decision was taken on the applicant's representation at A/6, he filed the OA No.561/2011 which was disposed of with direction to the respondents to dispose of the representation by a speaking order. Accordingly, the Railway Board rejected the representation by passing the order dated 6.1.2012 (Annexure-A/9) which stated as under:-

“2. In terms of Dynamic Assured Career Progression (DACP) Scheme dated 25.06.02, a JA Grade IRMS officer may be placed in Selection Grade on completion of 4 years regular service in JA

Grade. By virtue of his empanelment to JA Grade with effect from 19.01.2005, he was placed in Selection Grade with effect from 19.01.2009 on completion of 4 years service in JA Grade in terms of DACP Scheme dated 25.06.02.

3. In terms of Para 4(c) of DACP Scheme dated 24.08.09, a Doctor with more than 20 years of regular service and working in Selection Grade prior to 07.01.09 can be granted SAG pay structure of Grade Pay of Rs.10000 in the Pay Band-4 without rendering full 7 years of service in the NFSG Grade.
4. Dr. B.P. Parida was working in JA Grade not in Selection Grade as on 07.01.09. Therefore, he was not eligible to be considered for promotion to SA Grade w.e.f. 07.01.09 in terms of DACP Scheme dated 24.08.09. This was done as an one time exception. He would now become eligible to be considered for promotion to SA Grade on completion of 7 years service in Selection Grade in terms of letter dated 07.01.09. In view of this, his request cannot be acceded to.”

6. The applicant challenges the order dated 24.08.2009 (A/6) of the Railway Board on the ground that stipulates a cut off date 07.01.2009 for allowing the Doctors with more than 20 years service if they are with the GP of Rs.8700/- as on 07.01.2009 and denying other doctors is discriminatory and arbitrary in view of the language of the order dated 7.1.2009 (Annexure-A/5). Such cut off date by way of clarification is without any intelligible differentiating criteria. Hence, it is stated in the OA that the orders dated 24.08.2009 and 6.1.2012 are illegal and are liable to be quashed.

7. The respondents have filed their counter resisting the OA, mainly on the ground that the Railway Board has adopted the guidelines of the Ministry of Health and Family Welfare, Govt. of India (in short MoHFW) vide their letter dated 29.10.2008 (Annexure-R/1) on which the MoHFW subsequently issued some clarifications vide letter dated 21.07.2009 (Annexure-R/2) in which it was stipulated

that a Doctor with more than 20 years of service and already regularly promoted as CMO-NFSG with Grady pays of Rs. 8700/- in the PB-4 on the date of implementation of the DACP scheme can be granted the SAG with the G.P of Rs. 10, 000/- . It is ad versed that their clarification of MoHFW were adopted by the Railway Board vide its order dated 24.08.2009(Annexure-A/6).

8. Regarding the contention in the OA that fixing a cut-off dated for availing the DACP scheme as per order dated 07.01.2009 is arbitrary, it is stated in the counter that the DACP scheme is effective from 07.01.2009 and the difference between a Doctor promoted are or two days prior to 07.01.2009 with G.P of Rs. 8,700/- and the applicant (who was promoted to the G.P of Rs. 8,700/- w.e.f 19.01.2009) is an academic discussion having no bearing on the present case. It was further stated in the counter (Vide para-5) that :-

“the fact remains that despite having 20 years of regular service the applicant was not promoted to the selection grade, on the day of the initiation of the Scheme i.e. 07.01.2009 vide Annexure-A/5. It is only after introduction of the scheme and on availing the benefit of the scheme under Annexure-A/5 the applicant got promotion to SG Grade with retrospective effect from 07.01.2009. In the self same circular at para-4 it has been provided inter-alia that the residency period mentioned at para-2 as per the new scheme will be strictly followed or promotion to Grade Pay of Rs. 10,000/- in PB-4.”

It is also stated in the counter that vide order at Annexure-R/3. The applicant has been promoted to SAG under DACP w.e.f 07.01.2016 after completion of 07 years in the G.P of Rs. 8, 700/-.

9. Rejoinder has been filed by the applicant stating that a Doctor who are already in NFSG with GP of Rs. 8700/- were allowed relaxation in 07 years of service for elevation to SAG in GP of Rs. 10,000/- where as others like the applicant were not

allowed such benefit. It was stated that his career has been adversely affected as his promotion to SAG under DACP has been delayed by 07 years.

10. Learned counsel for both the parties were heard. The respondents' counsel has also filed a short note stating that as explained in Para 2, 4, 5 and 6 of the counter, the reasons for issuing the clarification at Annexure-A/6 have been stated.

11. The issues to be decided in the case are as under:-

- i) Whether the order dated 24.08.2009(Annexure-A/6) is arbitrary and discriminatory as claimed in the OA.
- ii) Whether the applicant entitled to the benefit of promotion/upgradation to SAG with G.P of Rs. 10,000/- w.e.f 07.01.2009 which is the date of introduction of DACP Scheme.

12. The only ground of challenge of the order at Annexure-A/6 is that the applicant was deprived of the upgraded promotion w.e.f. 7.1.2009 to the GP of Rs.10,000 where as another Doctor who got promotion to the GP of Rs.8700/- one day prior to 7.1.2009 would get the benefit of promotion to the GP of Rs.10,000/- under DACP Scheme in 7.1.2009. We find such a ground not convincing enough to treat the order at Annexure-A/6 as discriminatory on arbitrary. The cut off date of 7.1.2009 is fixed on the date of issue of the order dated 7.1.2009 (Annexure-A/5) when the DACP Scheme was launched. Moreover, such a cut off date has been decided by the MOHFW also and there is nothing on record that the employees of the MOHFW have any grievance on account of the cut off date denied by the MOHFW.

13. In view of the discussion above, we are of the considered view that the grounds furnished in the OA to challenge the order dated 24.8.2009 (Annexure-A/6) are not sufficient to interfere with the order dated 24.08.2009 and hence, the issue No.(i) of Para 11 is answered accordingly.

14. Regarding the issue No.(ii) of Para 11, we will have to examine if the applicant has a case for his claim to be upgraded to the SAG with the GP of Rs.10,000/- w.e.f. 7.1.2009 in the light of the orders dated 7.1.2009 (Annexure-

A/5) and 24.8.2009(A/6). The Para 4(c) and Para 5 of the order dated 24.08.2009 which is relevant for the case, status as under:-

“(c) A Doctor with more than 20 years of regular service and already regularly promoted as CMP-NFSG (Grade Pay of Rs.8700 in the Pay Band-4) on the date of initial implementation of the Scheme can be granted SAG pay structure of Grade Pay of Rs.10000 in the Pay Band-4 without rendering full 7 years of service in the NFSG grade.

5. Having been granted financial upgradation under DACP in above manner at the time of initial implementation of the Scheme, thereafter, the Doctors would have to earn their next upgradation under DACP Scheme, as per the eligibility of service prescribed in the letter of even number, dated 07.01.2009.”

The above stipulations of the order dated 24.08.2009 imply that a Doctor with more than 20 years of regular service and already regularly promoted as CMO-NFSG the Grade Pay of Rs.8700/- can be granted SAG with the GP of Rs.10,000/- in PI-4 without rendering full 7 years of service at the level of GP of Rs.8700/-.

15. It is undisputed that the applicant has been promoted to the Selection Grade with retrospective effect from 7.1.2009 as stated in Para 5 of the counter, which is also extracted in para 8 of this order. Clearly, the respondents have allowed the GP of Rs.8700/- (Selection Grade) w.e.f. 7.1.2009 to the applicant under DACP Scheme. Hence, as on 7.1.2009, the applicant would be deemed to be on Selection Grade with the GP of Rs.8700/- although the order to give effect to such promotion w.e.f. 7.1.2009 was issued after 7.1.2009. Hence, as on 7.1.2009, the applicant would be treated to be on the GP of Rs.8700/-, for which, under Para 4 (c) of the order dated 24.08.2009 (Annexure-A/6), the applicant would be entitled to be upgraded to the GP of Rs.10,000/- since he was on the

GP of Rs.8700/- as on 7.1.2009 and the minimum residency requirement for the GP of Rs.8700/- would not be applicable for the applicant.

-8-

16. In view of the facts and circumstances as discussed in the proceeding paragraphs, we are of the considered opinion that the contention in the impugned order dated 6.1.2012 (Annexure-A/9) that the applicant was not working in Selection Grade (with GP of Rs.8700/- as on 7.1.2009 is not correct in view of his promotion to the GP of Rs.8700/- w.e.f. 7.1.2009 as stated in the Para 5 of the counter. Therefore, the applicant, who has already been promoted to the SAG with the GP of Rs.10,000/- w.e.f. 7.1.2016 vide order dated 14.01.2016 (Annexure-R/3 of the counter), is entitled to be considered for such promotion w.e.f. 7.1.2009.

17. Accordingly, the impugned order dated 6.1.2012 (Annexure-A/9) rejecting the representation of the applicant is set aside and the matter is remitted to the respondent No.5 to re-consider the case of the applicant for promotion to SAG under DACP Scheme to the G.P. of Rs.10,000 w.e.f. 7.1.2009 in accordance with the order dated 7.1.2009 (Annexure-A/5) read with the order dated 24.08.2009 (Annexure-A/6), keeping in mind the observations made in this order. If the applicant is found eligible for promotion w.e.f. 7.1.2009, then he will be allowed such promotion on notional basis till he has been promoted w.e.f. 7.1.2016 vide order as Annexure-R/3. The respondents are to comply with this order within six months from the date of receipt of a copy of this order.

18. The OA is allowed to the extent as mentioned above with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

