

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

O.A.No.257/2018

Dated this Monday the 16th day of September, 2019.

**Coram: Dr. Bhagwan Sahai, Member (Administrative).
R. N. Singh, Member (Judicial).**

1. Dr. Bidhan Rana, Age:54 years,
Sr. Medical Officer (Homeo.),
CGHS Mukund Nagar,
Pune-411 009.
(R/at. P4, 202, Oxford Village,
Wanorrie, Pune-411 040.)

...Applicant.

(By Advocate Ms. Sujata Krishnan).

Versus

1. The Union of India, through
The Secretary,
Ministry of Ayush,
Department of Ayush,
Ayush Bhawan, 'B' Block,
GPO Complex,
INA, New Delhi-110 023.
2. The Director, CGHS
Ministry of Health and
Family Welfare,
Nirman Bhawan,
New Delhi-110 001.
3. The Additional Director
CGHS, Mukund Nagar,
Pune-400 009.
4. The Secretary,
Department of Personnel and
Training, North Block,
New Delhi-110 001.
5. The Secretary, UPSC,
Dholpur House,
Shahjahan Road,
New Delhi-110 069.

... Respondents.

(By Advocate Shri N. K. Rajpurohit).

Order reserved on: 04.07.2019

Order delivered on: 16.09.2019

O R D E R
Per : Dr. Bhagwan Sahai, Member (A)

1. Dr. Bidhan Rana filed this OA on 28.03.2018 seeking declaration that he is entitled for counting of his service rendered as Medical Officer with Sashastra Seema Bal from 21.04.1997 to 06.05.2007 for time-bound financial up-gradation under Dynamic Assured Career Progression Scheme (DACP Scheme). He also seeks setting aside of letter dated 22.02.2018 along with directions to the respondents to grant him the financial up-gradation under the DACP Scheme with all consequential benefits along with the cost of this OA.

2. Summarized facts:-

2(a). The applicant has stated that at the time of filing of the OA, he was working as Civilian Senior Medical Officer with dispensary no.3 in Camp-1, Pune under Administrative control of respondent no.3 i.e. Additional Director, CGHS, Mukund Nagar, Pune. After acquiring degree of BHMS in the year 1990, he was appointed as Medical Officer (Homeopathy) with grade pay of Rs.2200-4000 from 21.04.1997 with Sashastra Seema Bal (wrongly mentioned in the OA as the Special Service Bureau) under the Cabinet Secretariat, Government of India

(Annex A-2). He was directed to report to Divisional Organiser, S.S.B., Arunachal Pradesh Division, at Itanagar. After completing his probation successfully he was confirmed in service w.e.f. 21.04.1999. Vide order dated 29-30.04.2002 he was transferred from Itanagar to Bhabraich.

2(b). Vide letter dated 05.07.2006 (Annex A-4) he was informed that along with other similarly placed Medical Officers (Homeo.) of S.S.B. had been declared as Surplus and referred to Division of restraining and re-deployment of DoPT. As per the communication received from UPSC, he appeared for a personal discussion in the UPSC office on 30.10.2006 for consideration to be re-deployed as Medical Officer (Homeo.) under the Department of AYUSH, Ministry of Health and Family Welfare, Government of India. He was directed to report to Additional Director, CGHS, Guwahati. He accepted the order of appointment and joined with CGHS, Guwahati. Subsequently he was transferred to CGHS, Lucknow by order dated 18.06.2013 of the respondent no.1 i.e. Department of AYUSH.

2(c). The applicant along with 15 other Medical Officers (Homeo.)/Research Officers (Homeo.) were promoted as Senior Medical Officers in Pay Band of 15600-39100 with Grade Pay of Rs.6600/- p.m. (Annex

A-7) w.e.f. 07.05.2011 and he was transferred as SMO with CGHS, Pune.

2(d). The Ministry of Health and Family Welfare, Department of AYUSH, Government of India issued an OM dated 25.04.2011 (Annex A-8) for extending the DACP Scheme to Practitioners of Indian System of Medicines and Homeopathy. For financial up-gradation under the DACP Scheme, the applicant claims that he is entitled for counting of his service from 04.04.1997 to 06.05.2007 as Medical Officer with SSB but the respondent no.1 did not grant the time-bound financial up-gradation under the DACP Scheme to him and similarly placed other Senior Medical Officers (Homeo.) who had earlier rendered regular service with SSB, and were later on redeployed with CGHS.

2(e). Therefore, one Dr. Kondareddy Sudhakar Reddy, who was appointed as Medical Officer (Homeo.) along with the applicant with SSB, was declared surplus in the year 2006 and re-deployed as SMO with CGHS, posted with CGHS, Hyderabad filed the OA No.760/2014 before the Central Administrative Tribunal, Hyderabad Bench. This OA was allowed by order dated 21.07.2015, directing the respondents to consider the grant of financial up-gradation to Dr. Kondareddy Sudhakar Reddy under the DACP Scheme.

2(f). Based on the above decision in favour of

Dr. Kondareddy Sudhakar Reddy, the applicant submitted a representation to the respondent no.1 on 24.04.2017 for granting him the financial up-gradation under the DACP Scheme. Another OA i.e. OA No.2152/2014 filed by Dr. Prashant Chimurkar (SMO, CGHS, Nagpur) with this Bench of the Tribunal was also allowed by the order dated 05.12.2016 holding that he was entitled for counting of his earlier service as Medical Officer with SSB for the time-bound financial up-gradation under the DACP Scheme. That order of the Tribunal in favour of Dr. Chimurkar has also been implemented by the respondents vide order dated 05.04.2018 (Annexure A-3).

2(g). Since the applicant's case is similar to that of Dr. K. S. Reddy and Dr. Prashat Chimurkar, this OA has been filed for grant of the him financial up-gradation to him under the DACP Scheme by counting his earlier service as Medical Officer (Homeo.) with SSB.

3. Contentions of the parties:-

In the OA, rejoinder filed on 15.03.2019 and during the hearing on 04.07.2019, the applicant and his counsel have contended that:-

3(a). the applicant was appointed as Medical Officer (Homeo.) with SSB after being selected for

that post by the UPSC, he served with the SSB as Medical Officer from 21.04.1997 till 06.05.2007 and thereafter on being declared surplus was re-deployed with CGHS in the year 2007. Thus he has been in service under the Government of India continuously since April 1997 and therefore he is eligible for the financial up-gradation under the DACP Scheme made applicable by the Department of AYUSH, Ministry of Health and Family Welfare, Government of India vide OM dated 25.04.2011 for the practitioners of Indian Systems of Medicine and Homeopathy. Its denial to the applicant by the respondents is arbitrary and illegal, since other similarly placed Senior Medical Officers working with the CGHS after their re-deployment have already been granted that benefit as per the decisions of Hyderabad and Mumbai benches of the Tribunal. Therefore, this OA should be allowed;

3(b). as per the DoPT OM dated 28.02.1990, the employees declared surplus have no claim for counting their past service towards fixation of seniority in the post to which he or she is re-adjusted/re-deployed but the applicant is not asking for counting of his past service with SSB for seniority, he is requesting for grant of only the financial up-gradation under the DACP Scheme;

3(c). and the Department of AYUSH, Ministry of Health and Family Welfare, Government of India OM dated 25.04.2011 extending benefits of the DACP Scheme to practitioners of Indian System of Medicine and Homeopathy stipulates that the OM shall apply prospectively, after the recruitment rules are amended and till then instructions issued vide OM dated 25.01.1999 and OM dated 26.03.2008 would apply for grant of financial up-gradation under the DACP Scheme;

3(d). the applicant has also tried to benefit from decision of Chandigarh Bench of this Tribunal dated 08.10.2002 in case of Savita Rani Vs. Union Territory of Chandigarh and Others in OA No.274/2002 and OA No.3624/2000 holding that the benefit of the decision which has become final has to be extended to similarly situated other employees regardless of whether they were or not parties to the litigation.

In their reply and during the hearing, the respondents have contended that:-

3(e). as per the DoPT's OM dated 28.02.1990 (para-6, sub para-4 (a)), surplus employees shall have no claim to count his past services including the services rendered in the post of provisional redeployment towards fixation of seniority in the post in which the employee was readjusted.

Therefore, the applicant cannot claim benefit of seniority for his past services with the SSB before being declared surplus;

3(f). as per the Department of AYUSH, Ministry of Health and Family Welfare OM dated 25.04.2011 regarding extension of the DACP Scheme to practitioners of Indian System of Medicine and Homeopathy, it has been clearly stated that the DACP Scheme is applicable only prospectively after the Recruitment Rules are amended and notified in consultation with Nodal Departments. Till the Recruitment Rules are amended, the instructions contained in OM dated 25.01.1999 and 26.03.2008 will apply for grant of DACP Scheme. Therefore, there is no cause of action for the applicant to file the present OA, he is not entitled for any relief claimed in the OA and therefore this OA should be dismissed; and

3(g). since the applicant was not found eligible for grant of financial up-gradation under the DACP Scheme, the Competent Authority in consultation with DoPT and Department of Legal Affairs correctly rejected the applicant's representation by letter dated 22.02.2018. Since the earlier service of the applicant as Medical Officer with the SSB cannot be counted for benefit of seniority in his post with

the CGHS, and the benefit of DACP Scheme has been extended only prospectively after the year 2011, there is no merit in the claim of the applicant and the OA should be dismissed.

4. Analysis and Conclusions:-

4(a). We have perused the OA memo, with its annexes, rejoinder of the applicant and reply of the respondents. We have also considered the arguments advanced by both the parties on 04.07.2019. After analyzing all these, our conclusions are as follows;

4(b). The main issue raised in the OA is whether the applicant is entitled for grant of benefit of financial up-gradation under the DACP Scheme by counting his prior service as Medical Officer with SSB before being declared surplus and re-deployed with CGHS. The OM dated 25.04.2011 issued by Department of AYUSH, Ministry of Family Welfare, Government of India (Page no.67 to 69) extended the DACP Scheme to various streams of Indian Systems of Medicine on par with the allopathy doctors as recommended by the 6th Central Pay Commission. The scheme was extended upto revised Grade Pay of Rs.8700 in Pay Band-IV to the practitioners of Indian Systems of medicines and homeopathy.

4(c). Accordingly, first time-bound in-situ promotion of Medical Officers/Research Officers (PB-

III GP Rs.5400) to Senior Medical Officers/Assistant Advisers (PB-III, GP Rs.6600) was to be given on completion of 04 years of regular service as Medical Officer/Research Officer based on seniority-cum-fitness. The 2nd time-bound in-situ promotion of Senior Medical Officers/Assistant Advisers to Chief Medical Officers/Deputy Advisers (PB-III GP of Rs.7600) was to be given on completion of 05 years regular service as Senior Medical Officers/Assistant Advisers or on Completion of 09 years of combined regular service as Medical Officers/Research Officers and SMO/Assistant Adviser with at least 02 years service as Senior Medical Officers/Assistant Advisers on the basis of seniority-cum-fitness.

4(d). It was further stipulated that the above orders shall apply prospectively after the Recruitment Rules are amended and notified with consultation of Nodal Departments. Till the time the Recruitment Rules are amended, the earlier instructions issued vide OM dated 21.01.1999 and 26.03.2008 will apply for grant of DACP Scheme.

4(e). In view of the above stipulations of the DACP Scheme extended to the Medical Officers (Homeo.), since the applicant was appointed as Medical Officer (Homeo.) with SSB from 21.04.1997 and then on being declared surplus from 05.07.2006

was re-deployed with CGHS under the Department of AYUSH from 07.05.2007, by the time the OM dated 25.04.2011 was issued, he had already rendered service of at least 14 years. The applicant was promoted as Senior Medical Officer vide order dated 18.06.2013 w.e.f. 07.05.2011.

4(f). While it is not disputed that as per the DoPT's OM dated 28.02.1990, past service of the applicant rendered as Medical Officer with the SSB cannot be counted for seniority in the CGHS, in the context of the present OA as submitted by the applicant, we note that the Hyderabad Bench of this Tribunal and this Bench of the Tribunal by order dated 21.07.2015 in OA No.760/2014 (page no.28 to 36) on 05.12.2016 the OA No.2152/2014, respectively, have already allowed the two OAs of Senior Medical Officers (Homeo.), similarly placed with the present applicant in terms of earlier service as Medical Officer (Homeo.) with the SSB, and on being declared surplus in that position, subsequent re-deployment with CGHS. It is also not disputed that the above orders of the 02 benches of the Tribunal, the respondents have implemented by order dated 22.11.2016 in respect of Dr. K. S. Reddy granting him first financial up-gradation from 18.11.2001 and 2nd financial up-gradation from 18.11.2007 as well as

order dated 06.02.2018 in respect of Dr. Prashant Tukaram Chimurkar. In view of similarity of the applicant's case with other two cases of the Dr. K. S. Reddy and Dr. P. T. Chimurkar as stated above, agreeing with the view taken in those two cases, the present OA deserves to be allowed for grant of 1st and 2nd in-situ promotion/financial up-gradation to the applicant from due dates by considering his earlier service as Medical Officer (Homeo.) with SSB from April 1997 to May 2007. Hence it is allowed. The respondents should accordingly issue necessary order for grant of first and second financial up-gradation to the applicant under the DACP Scheme within one month from the date of receipt of this order.

5. Decision:-

The OA is allowed in above terms. No order as to costs.

(R. N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

V.

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29/3/19