CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2384/2003

New Delhi this the 16th day of December, 2004.

HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

Dr. S.C. Mishra,
Chief Medical Officer,
Dr. Ram Manohar Lohia Hospital,
New Delhi-110 001. -Applicant

(By Senior Counsel Shri G.D. Gupta with Sh. S.K. Sinha, Advocate)

-Versus-

Union of India,
Through the Secretary,
Ministry of Health and Family Welfare,
Department of Health,
Nirman Bhawan,
New Delhi. -Respondent

(By Advocate Shri V.S.R. Krishna)

O R D E R (ORAL)

Mr. Shanker Raju, Hon'ble Member (J):

Applicant impugns respondents' order dated 22.9.2003, whereby after a show cause notice benefits extended to applicant vide letter dated 7.5.1992 had been withdrawn.

2. A brief factual matrix, giving rise to the present OA, is that applicant was appointed as Chief Medical Officer on ad hoc basis on 21.11.1986 and was regularised vide order dated 7.5.1992 as Medical Officer, Group 'A' antedating his appointment from 21.11.1986 in compliance of the decision of the Apex Court in **Dr. P.P.C. Rawani and others v. Union of India and others**, (1992) 1 SCC 331. Applicant was further promoted as Senior Medical Officer w.e.f. 21.11.1990 and also as Chief Medical Officer in the senior time scale w.e.f. 21.1.1996.

3. On completion of 17 years of regular service a show cause notice was served upon applicant on 1.9.2003, whereby as the issue regarding extension of benefit of Dr. Rawani (supra) to similarly placed officers was in seize of the Ministry of Law and

Department of Personnel and Training, from the advice and in the light of the decision of the Apex Court in **Dr. M.A. Haque v. Union of India**, 1993 SCC (L&S) 412 as the benefit extended to applicant would result in widespread upheavals in the seniority of Doctors in CHS with further implication involving huge financial implications it has been proposed as to withdrawal of the benefits already accorded.

4. The aforesaid notice was responded with a additional reply. On receipt of the reply the benefits had been withdrawn.

5. Learned Senior Counsel Shri G.D. Gupta along with Shri S.K. Sinha, learned counsel has cited the following decisions to contend that once the benefit has been bestowed even wrongly after a lapse of about 17 years it cannot be changed and an action disadvantageous to applicant cannot be resorted to:

i) Roshan Lal v. International Airport Authority of India, 1980 Supp. SCC 449.

ii) Narender Chadha v. Union of India, AIR 1986 SC 638.

iii) Union of India v. K. Bablani, AIR 1999 SC 517.

iv) Roshni Devi & Others v. State of Haryana & Anr., 1998 (8) SCC 59.

6. On merits as well it is stated that once the decision of the Apex Court has formulated guidelines to be followed, applicant despite his status of non-CHS or CHS has been accorded appointment in Group 'A' and the respondents after a conscious decision has even prepared a list of non-CHS officers to whom t benefit was bestowed. Now after applicant altered his position by getting promotions and continuing for 17 years no action to his detriment can be taken and the respondents are estopped from acting as such, which is hit by the principles of promissory estoppel.

7. It is further contended that on equitable consideration as well non-accord of the benefit to others and huge financial

implications cannot be a justification to undo what has been done several years earlier.

8. Shri G.D. Gupta contended that the case of others is distinguishable as those Medical Officers were appointed either as daily wagers or on contract basis, whereas the decision in Dr. Rawani (supra) applies to ad hoc Doctors only.

9. Shri Gupta distinguished the decision in Dr. M.A. Haque (supra) by contending that the same was applicable to Railway Doctors and it has been observed therein that CHS is a different antitity with a wider conspectus and establishment. It is also stated that decision in Dr. Rawani (supra) being of a larger coram cannot be held per incuriam by a Bench of lesser coram, which is not in consonance with the doctrine of precedent.

10. As regards recovery etc., it is stated that in the wake of established law when the grant of benefit is not attributable to applicant and is not actuated with fraud or misrepresentation played by him, no recovery can be effected of the benefits already granted.

11. On the other hand, respondent's counsel Shri V.S.R. Krishna contended that in the light of the legal advice tendered by the Ministry of Law and Department of Personnel and Training and also in the light of the consultation with the Solicitor General of India a draft Cabinet Note has been prepared and is to be placed as a special case before the Cabinet for its decision.

12. Shri V.S.R. Krishna contends that applicant, admittedly, is a non-CHS officer appointed on ad hoc basis while the ratio of Dr. Rawani (supra) was wrongly applied to his case, which is an inadvertent mistake on the part of Government and in the light of

the settled decision of the Apex Court the mistake on the part of the Government can be rectified at any stage.

13. We have carefully considered the rival contentions of the parties and perused the material on record. In the light of the decision of the Apex Court in **M.S. Gill v. Chief Election Commissioner**, 1978 (1) SCC 405 any supplementary reason beyond the impugned order cannot be relied upon and would not be a justification to sustain an administrative action by the Government. Such reasons are to be ignored while examining the validity of an order impugned before us. We find from the show cause notice issued by the respondents that despite a statement of fact of appointment of applicant on ad hoc basis against non-CHS post the proposal to withdraw the benefits already extended to applicant is that benefit has to be extended to the similarly placed which would have huge financial implications and should be extended to the regularly recruited Doctors through UPSC in CHS, besides involving financial implications. Nowhere the proposal mentions that the decision in Dr. Rawani (supra) has been wrongly extended to applicant. If no such reason has been accorded and no reasonable opportunity to defend on that issue has been extended to applicant in the light of M.S. Gill (supra) respondents are precluded from taking such a plea to supplement their order by way of pleadings in the counter reply. This cannot be brought as a subject matter of judicial review.

14. Moreover, we find that the decision in Dr. M.A. Haque (supra) where it has been observed that Dr. Rawani's case (supra) would not be a judgment in rem and cannot be applied to the present case as therein the issue dealt with was of Railway Doctors

and a distinction has been made in the CHS cadre to which Dr. Rawani's case (supra) was applicable.

15. Moreover, we find that a Cabinet Note has also been prepared and is to be referred to the Cabinet for its decision, which, inter alia, included regularisation of contract and daily wager Doctors to which category applicant does not belong but yet there has been a reference of the case of applicant in the Cabinet Note. It would be pre-mature for the Tribunal to arrive at a finding on merits when the matter is in seize with the Cabinet.

16. However, we cannot loosesight of the decision of the Apex Court referred to by the learned Senior Counsel (supra) wherein it has been established that even if a wrong has been done or mistake is committed having regard to the fact that these benefits have been continued for long years on the ground of equity, legitimate expectation and promissory estoppel, it would not be equitable to disturb the same. Be that as it may, without prejudice to the claim of applicant as to applicability of Dr. P.C. Rawani (supra) and justification for grant of benefits such an action on the part of respondents certainly offends equity. Moreover, the claim of others and extension of benefits to them with huge financial benefits cannot be countenanced, as in our Constitution we do not have a concept of negative equality.

17. Without adjudicating upon other legal grounds raised by applicant, for the reasons recorded above, as the show cause notice is incomplete and applicant has not been afforded an opportunity against the ground now taken to withdraw the benefits as reflected from the counter reply certainly it is denial of

reasonable opportunity, which is not in consonance with the principles of natural justice.

18. Moreover, we find that the order passed by respondents, withdrawing the benefit is non-speaking as in a quasi judicial and administrative action sine qua non is fairness in procedure and recording of reasons which cannot be dispensed with if the civil consequences ensue upon a government servant on such an action.

19. In the result, OA is partly allowed. Impugned order is set aside. Respondents are directed to forthwith restore back the benefits already accrued to applicant with all consequential benefits. However, this shall not preclude respondents, after the decision of the Cabinet is available with them, to act in accordance with law. No costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Vice-Chairman(A)

'San.'