

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 19.11.2012

W.P.(C) 7688/2011

UNION OF INDIA & ORS

..... Petitioners

versus

PRAVESH MEHRA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr S.K. Dubey with Mr Ruchir Mishra and Ms Bhagyashree Pati

For the Respondent : Mr Maninder Singh, Sr Advocate with Mr Vivek Pandey, Mr Ashok Kashyap and Mr Siddharth Khatana

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against the order dated 24.09.2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.1870/2009. The said original application which was filed by the respondent herein was allowed by the Tribunal.

2. The issue raised in the said O.A. was as to from which date the Dynamic Assured Career Progression (DACP) Scheme as recommended by the 5th Central Pay Commission was to apply with regard to dental surgeons

working under the Ministry of Health and Family Welfare/Central Government.

3. The point raised by the respondent was that the DACP Scheme which had been made applicable to medical officers of the Central Health Service w.e.f. 05.04.2002 ought to have also been made applicable to dental surgeons who were involved in teaching, clinical, administrative, research work. This claim was based on the earlier recommendation of the 4th Central Pay Commission which was *inter alia* to the following effect:-

“11.76 The promotion prospectus of dental surgeons are said to be poor, and it has been presented that these should be comparable with general duty officers of Central Health Service.

11.77 There is no significant difference between the levels of minimum qualifications, course content and period of internship, etc. in BDS and MBBS course. Taking all relevant factors into consideration, we recommend that dental surgeons may be included in Central Health Service/Railway Medical Service and given the pay scales applicable to general duty officers of these services. With the inclusion in the respective medical services, we recommend that recruitment to the posts of dental surgeons may also be made through a competitive examination.”

4. Thereafter a Memorandum of Settlement between the Ministry of Health and Family Welfare and the Joint Action Council of Service Doctors was executed on 10.04.1989. Paragraph 4.2 of the said settlement reads as under:-

“4.2 Dental Surgeons will be treated on par with medical officers.”

5. Based upon the above Memorandum of Settlement, the respondent claimed to be treated at par with medical officers. Since the medical officers under the Ministry of Health and Family Welfare have been granted the benefit of DACP Scheme w.e.f. 05.04.2002, the respondent also claimed the same benefit w.e.f. 05.04.2002. Because such a benefit was not extended to the dental surgeons and in particular to the respondent, he made representations on 26.03.2004 and 27.02.2006 for applying the same norms as applied to the medical officers to the Central Health Service.

6. We may point out at this stage that the DACP Scheme which was made effective in respect of medical officers of the Central Health Service w.e.f. 05.04.2002 *inter alia* entailed the following:-

“2(ii) The Specialists Officer of the Non Teaching and Public Health sub cadres will be promoted from Specialist Grade II (Junior Scale) Rs.10000-15200 to Specialist Grade II (Senior Scale) (Rs.12000-16500) on completion of 2 (two) years of regular service. Specialist Grade II (Senior Scale) officer with 4 (four) years’ regular service as Specialist Grade II (Senior Scale) will be promoted to Specialist Grade I (Rs.14300-18300). In the Teaching sub cadre Assistant Professor (Rs.10000-15200) will be promoted to Associate Professor (Rs.12000-16500) on completion of 2 (two) years of regular service in the grade of Assistant Professor. Associate Professor with 4 (four) years of regular service will be promoted to the grade of Professor (Rs.14300-18300). In other words, officers

of Teaching, Non Teaching and Public Health sub cadres will be promoted to Specialist Grade I/Professor (Rs.14300-18300) on completion of 6 (six) years of service. Specialist Grade II (Super Specialities)/Associate Professor (Super Specialities) in the pay scale of Rs.12000-16500 will be promoted to Specialist Grade I/ Professor (Rs.14300-18300) on completion of 4 (four) years of regular service in the grade.”

7. It is apparent that insofar as medical officers of the Central Health Service were concerned, promotion from the post of Assistant Professor to Associate Professor was to take place within two years and the promotion from the post of Associate Professor to Professor was to take place within four years of regular service as an Associate Professor. The respondent claimed a similar benefit insofar as dental surgeons were concerned. Ultimately, on 25.08.2006 the Ministry of Health and Family Welfare issued an order extending the benefit of promotion under the DACP Scheme to dental officers under the Ministry of Health and Family Welfare. The Scheme was virtually the same as that which was applicable in respect of the medical officers of the Central Health Service. The only difference being that while the earlier scheme came into operation w.e.f. 05.04.2002, this extension of the scheme was sought to be brought into effect from 2006.

8. We may also point out at this stage itself that the benefit of DACP scheme has thereafter been extended to the respondent inasmuch as he got

the promotion as Associate Professor w.e.f. 17.07.2006 and as Professor w.e.f. 17.07.2010. The only point of contention is with regard to the date from which the Scheme is to operate. To make it clear it is not disputed by the petitioner that the DACP Scheme is applicable and is in operation. The only point of contention is that according to the petitioner the Scheme would apply prospectively from 25.08.2006 whereas according to the respondent the Scheme ought to apply w.e.f. 05.04.2002 which is a date on which the Scheme was made applicable to medical officers of the Central Health Service.

9. The Tribunal has examined the rival contentions of the parties and has concluded that the DACP Scheme should be made applicable to the respondent and other dental surgeons w.e.f. 05.04.2002 and not from 25.08.2006. The Tribunal has arrived at this conclusion on the premise that the DACP Scheme has been extended to the dental surgeons because of the parity which was to be maintained on account of the settlement of 1989. The Tribunal noted that this was also the stand of the petitioner before the Tribunal. Paragraph 4 of the counter affidavit of the petitioner herein was noticed and it was to the following effect:-

“4. The above DACP Scheme was not granted to the Dental Doctors at that time. However, considering the Dental doctors

at par with the Medical doctors in pursuance to the Memorandum of Settlement signed between Ministry of Health and Family Welfare and the Joint Action Council of Service Doctors (JACSDO), the case for granting of DACP to Dental Doctors was taken up with Department of Personnel and Training & Department of Expenditure. Accordingly, after obtaining their approval, the Scheme of DACP was implemented in respect of Dental doctors vide order No.A45012/1/2002-CHS VI dated 25.08.2006 with effect from the date of issue of the order i.e. w.e.f. 25.08.2006. According to this DACP Scheme, Dental doctors in the Teaching side, Assistant Professor (Rs.10,000-15,200) will be promoted to the post of Associate Professor (Rs.12,000-16,500) on completion of two years of regular service in the Grade. Thereafter, Associate Professor with four years of regular will be promoted to the post of Professor (Rs.14,300-18,300). True copy of DACP for Dental Doctors introduced vide order dated 25.08.2006 is Annexure R-3.”

10. A plain reading of the said paragraph indicates that the reason for extending the DACP Scheme to the dental surgeon was the settlement arrived at in 1989. Though the year 1989 is not mentioned in the paragraph extracted above, it is an admitted position that the settlement had been arrived at in 1989 as has been pointed out by us above. The settlement was in existence on the date on which the DACP Scheme was applied to the medical officers of the Central Health Service. There was, therefore, in the view of the Tribunal, no reason as to why the DACP Scheme ought not to have been made applicable to the dental surgeons also from that date. We agree with this view of the Tribunal. There is no reason given by the

petitioner as to why the extension of the DACP Scheme was delayed insofar as the dental surgeons were concerned. Particularly, when the admitted premise for extending the Scheme for the dental surgeons was the Memorandum of Settlement of 1989 which was in existence on the date on which the DACP Scheme was made applicable to the medical officers of Central Health Service on 05.04.2002. It is also pertinent to note that the DACP Scheme has been extended to the SAG grade in respect of the medical officers as well as dental surgeons w.e.f. the same date i.e. from 29.10.2008. There is, therefore, no tangible reason as to why the benefit of the DACP Scheme ought not to have been given to the dental surgeons from the same date on which it was made applicable to the medical officers of the Central Health Service, that is, w.e.f. 05.04.2002.

11. As a result, we see no infirmity in the impugned order passed by the Tribunal. The writ petition has no merit. The same is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

NOVEMBER 19, 2012
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