

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.38868 of 2013

ORDER:

Heard the learned counsel for the petitioner and Smt.Siva Kumari,
learned counsel for the respondents.

2. In this Writ Petition, the petitioner has challenged the inaction of the respondents in fixing her seniority, fixing her pay and denying notional promotion and other consequential benefits to her as per the admissible service rules and in accordance with Dynamic Assured Career Progression (DACP) Scheme dt.05-04-2002 framed by the Government of India, Ministry of Health and Family Welfare (Department of Health) in its Notification No.21/14/97-PC(H)/CHS-V. She seeks a consequential direction to the respondents to promote her as Senior Medical Officer in 1998, Chief Medical Officer in 2003 and Chief Medical Officer (NFSG) in 2007 by fixing the pay scale accordingly and also to release the arrears of monetary benefits and other consequential benefits including admissible notional promotion.

3. The petitioner was appointed as an Ad-hoc Medical Officer in the Central Industrial Security Force (CISF) on 29-10-1994 after she secured MBBS degree in 1992 after undergoing selection process. Her initial appointment was for six months, but the same was extended from time to time with the approval of Department of Personnel and Training, Ministry of Health and Home Affairs.

4. On 08-06-1998 she was served on notice stating that no extension would be done after 30-06-1998.

5. Aggrieved by this notice, she filed O.A.No.478 of 1998 before the Central Administrative Tribunal (CAT), Jabalpur Bench. Interim orders were granted in her favour to continue her services till O.A. is decided by the said Tribunal.

6. On 10-04-2012, O.A.No.478 of 1998 was allowed by the said Tribunal holding that the petitioner had rendered service for several years from 1994; there were no regularly selected candidates and the posts were lying vacant; by virtue of having rendered several years of service, the petitioner has acquired right of employment; and the respondents should decide her regularization within six months from the date of receipt of order of the Tribunal after consultation with the Union Public Service Commission. It held that the service of the petitioner shall not be terminated till the decision is finally taken about her regularization and the Union Public Service Commission was granted liberty to determine the method by which they consider the regularization of the petitioner just and proper.

7. The respondent Nos.1 and 2 and two others questioned this decision of the CAT in W.P.No.1454 of 2004 before the High Court of Chhattisgarh at Bilaspur.

8. The Writ Petition was dismissed on 26-07-2007 approving the decision of the Tribunal. It held that the petitioner had worked for a long period, possessed requisite qualifications and even while being appointed on Ad-hoc basis, had been selected by a Selection Committee

and her service could not have been terminated in view of the exception carved out in the case of **Secretary, State of Karnataka Vs. Umadevi**¹.

9. This was questioned by respondent Nos.1 and 2 before the Hon'ble Supreme Court of India in Special Leave to Appeal (Civil).....of 2008 in C.C.No.3338 of 2008 and the SLP was dismissed on 07-03-2008.

10. Thereafter, the 2nd respondent passed an order on 26-10-2009 stating that the Union Public Service Commission had interviewed the petitioner on 28-07-2009 and recommended her Ad-hoc appointment in the CISF to the Grade of Medical Officer with effect from 29-10-1994 and so her Ad-hoc appointment to the post of Medical Officer in the said organization was regularized with effect from 29-10-1994, the date on which she joined on Ad-hoc basis.

11. Curiously it was stated therein that the CISF did not have its own medical cadre; the Indo Tibetan Boarder Police (ITBP) and CISF have a combined medical cadre; ITBP is the cadre controlling authority which provides Medical Officers to CISF on duty basis in the combatised stream and the petitioner will also be in the said stream in the combined medical cadre of ITBP and CISF; and that service matters of Medical Officers such as promotion, seniority etc would be regulated by the ITBP which is the cadre Controlling Authority under the provisions contained in the Recruitment Rules of Medical Officers.

12. Pursuant to this proceeding, a Notification dt.20-10-2010 was issued by 2nd respondent regularizing her services in the post of Medical Officer in CISF retrospectively with effect from 29-10-1994 subject to the

¹ (2006) 4 S.C.C. 1

terms and conditions mentioned therein. She was also issued an appointment order by 3rd respondent on 01-11-2010 pursuant to the order dt.06-10-2009 as Medical Officer in CISF.

13. While the above proceedings were going on, the Government of India, Ministry of Health and Family Welfare (Department of Health) issued proceedings No.21/14/97-PC(H)/CHS-V dt.05-04-2002 introducing a Dynamic Assured Career Progression Scheme for Officers of the Central Health Services on the basis of recommendations of Fifth Central Pay Commission.

14. Under this Scheme, a Medical Officer would be promoted to the post of Senior Medical Officer on completion of four years regular service; a Senior Medical Officer with five years of regular service as such would be promoted to the post of Chief Medical Officer; and after completion of four years in Chief Medical Officer Grade, he/she would be promoted to the post of Chief Medical Officer (Non Functional Selection Grade). Thus on completion of 13 years of regular service in the GDMO sub cadre of CHS, a person would reach the post of Chief Medical Officer (Non Functional Selection Grade).

15. On 05-09-2003, proceeding No.P.VII-1/2002-CRC-MOs/CRPF/PF.III was issued by the Ministry of Home Affairs addressed to Director General, CISF (2nd respondent) as well as Director General of ITBP (5th respondent) and others to give effect to the DACP Scheme communicated by the Ministry of Health and Family Welfare on 05-04-2002.

16. Petitioner contends that by virtue of regularization of her service with effect from 29-10-1994 and in view of the fact that the DACP Scheme provided for the promotion after every four years of service, on completion of four years of service by her in 1998, she was entitled to be promoted to the post of Senior Medical Officer; by 2003 she was entitled to be promoted as Chief Medical Officer thereafter; and by 2007 as Chief Medical Officer (Non Functional Selection Grade). She contended that apart from this, her services should be counted from 1994 onwards and regular promotions were required to be given on notional basis and her salary had to be refixed as per the said Notional Promotions and the respondent had not done it.

17. Petitioner made representation to the Deputy Secretary of the 1st respondent on 19-08-2010 seeking the above benefits. As there was no response, she made another representation on 29-11-2010 to 2nd respondent and the 2nd respondent had also not passed any orders.

18. She then filed O.A.No.438 of 2011 before the CAT, Jabalpur Bench for grant of service benefits, fixation of seniority and for arrears of admissible amounts. But the said O.A. had to be withdrawn on the ground that the said Tribunal was not the appropriate forum on 09-04-2013 and thereafter, this Writ Petition was filed.

19. Learned counsel for the petitioner reiterated the above contentions and stated that having regularized the services of the petitioner as Medical Officer with effect from 29-10-1994, the respondents also ought to have given her the benefit of the DACP Scheme as well as other benefits

mentioned above and the action of the respondents in denying the same to the petitioner is arbitrary and illegal.

20. In the counter affidavit filed by the respondents, while admitting that the petitioner had joined as a Medical Officer in CISF on 29-10-1994 on Ad-hoc basis and her services were regularized with effect from 29-10-1994 as such. It is contended that the CISF did not have its own medical cadre/recruitment rules and so the Ministry of Home Affairs was requested to allow the CISF to conduct DPC by Director General (competent authority) based on ITBP Recruitment Rules. It is stated that the case was examined in the Ministry of Home Affairs and Department of Personnel in Training in consultation with the Department of Personnel and Training and it was opined that since CISF did not have any medical cadre of its own or DACP scheme, the claim of the petitioner for upgradation in DACP would only w.e.f 02-09-2004 after merging in ITBP where the scheme was in existence.

21. It is stated that petitioner was taken over in the strength of the combined Medical Cadre of ITBP and CISF with effect from 02-09-2004 against the post of Medical Officer (Assistant Commandant) in the pay scale of Rs.8000-275-13500 vide ITBP order dt.16-09-2011 stipulating that her services would be governed by ITBP Act and Rules, and that her promotion in the DACP scheme will be considered only w.e.f 02-09-2004 would be regulated under the provision contained in the recruitment rules of medical officers. It is asserted that the claim of the petitioner for upgradation under DACP scheme would only be w.e.f 02-09-2004 after merging in ITBP where the scheme was in existence and not from 29-10-1994.

22. Smt. Siva Kumari, learned counsel for the respondents, reiterated the above submissions.

23. A reply affidavit has been filed by the petitioner refuting the above contentions. She stated that when the respondents had admitted that the petitioner's services were regularized from 19-10-1994, they cannot deny the consequences of such regularization. She contended that when the Director General, CISF passed orders on 01-11-2010 regularizing her service with effect from 29-10-1994, the merger of petitioner service with ITBP from 02-09-2004 should have been in the post of Senior Medical Officer and only from 02-09-2004, she would be in the ITBP cadre. According to the petitioner, this was the stand taken by 5th respondent in the letter addressed to 2nd respondent on 07-07-2010 and that she would remain on the strength of the CISF up to 01-09-2004 and would be considered for appointment against the combatised post in ITBP. Therefore she contends that she can be sent to ITBP by giving all service benefits and promotions in CISF in the cadre of Senior Medical Officer and the respondents cannot take the stand that the services of the petitioner prior to 02-09-2004 cannot be counted.

24. I have noted the submissions of both sides.

25. From the facts narrated, it is clear that pursuant to the decision in O.A.No.474 of 1998 dt.10-04-2002, the petitioner had been interviewed by the Union Public Service Commission on 28-07-2009 and her case was recommended for regular appointment in CISF to the grade of Medical Officer with effect from 29-10-1994, the date when she joined in the CISF on Ad-hoc basis. It is only thereafter that her services were

transferred to the ITBP on the ground that the CISF did not have its own medical cadre. The Proceedings dt.06-10-2009 issued by 2nd respondent stated that matters of promotion, seniority etc would be regulated by the ITBP which was the Cadre Controlling Authority.

26. It is pertinent to note that the contention that the CISF did not have its own medical cadre, that the ITBP and CISF have combined medical cadre and ITBP Cadre Controlling Authority which provided the Medical Officer to CISF on duty basis in combatized stream, was never urged by the respondent Nos.1 and 2 in O.A.No.474 of 1998 before the CAT, Jabalpur or in the W.P.No.1454 of 2004 before the High Court of Chhattisgarh or before the Hon'ble Supreme Court of India which dismissed the application for grant of leave on 07-03-2008.

27. Therefore, it is not open to the respondents to now contend that because her services were transferred to ITBP after regularization of her service by CISF, her service would be counted only from 02-09-2004 on which date her services were taken by ITBP and not from 29-10-1994, the date when her services were regularized with retrospective effect by the 2nd respondent pursuant to the order of the CAT, Jabalpur which was confirmed by the High Court of Chhattisgarh and the Supreme Court.

28. By the date the Supreme Court dismissed the SLP in 2008, admittedly the DACP Scheme was already in vogue and had been communicated by proceeding dt.05-04-2002 providing for periodic promotions from the post of Medical Officer to Senior Medical Officer and ultimately to the Chief Medical Officer (NFSG).

29. Both the Director General, CISF (the 2nd respondent) and the Director General, ITBP (5th respondent) were directed by the 1st respondent through proceedings dt.05-09-2003 to implement the said scheme.

30. Therefore, the 2nd respondent ought to have given said benefit to the petitioner on 06-10-2009 itself when he regularized her service with effect from 29-10-1994. He cannot take the stand that subsequent to regularization of her services, since the petitioner is placed in the ITBP Medical Cadre, her services would be counted as Medical Officer only from 02-09-2004. This action of the respondents is clearly arbitrary and illegal and violative of Article 14 of the Constitution of India.

31. Learned counsel for the respondents further contended that there is a disciplinary proceeding initiated against the petitioner pursuant to a charge memo issued in 2012 and therefore no promotion can be granted to the petitioner.

32. This contention is not tenable since the petitioner is contending in this Writ Petition that she should have been promoted by following the DACP Scheme long prior to 20-11-2012 to the post of Chief Medical Officer, NFSG by 2007 itself.

33. I therefore hold that the action of the respondents in not giving promotion to the petitioner as per DACP Scheme, which had been in operation in 2002 itself, in spite of the fact that the services of the petitioner had been regularized with retrospective effect from 29-10-1994, is arbitrary and illegal and that the petitioner is entitled to be promoted as Senior Medical Officer by 1998, as Chief Medical Officer by 2003 and as Chief

Medical Officer, NFSG by 2007 and she would be entitled to notional promotions on the said basis apart from arrears of pay for the duration she would hold each of these posts as per the DACP Scheme.

34. With the above directions, the Writ Petition is allowed. No costs.

35. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-11-2016

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