

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 27.3.2019

(1) CWP-19472-2017 (O&M)

State of Haryana through Chief Secy. Petitioner

Versus

Dr. Rippudaman Singh Dhillon and ors Respondents

(2) CWP-26564-2018 (O&M)

Union of India and others Petitioners

Versus

Central Administrative Tribunal and ors Respondents.

CORAM : HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Ms. Shubhra Singh, Addl. AG, Haryana
for petitioner in CWP-19472-2017 and
for respondent No. 1 in CWP-26564-2018.

Mr. Satya Pal Jain, Additional Solicitor General of India with
Mr. Sunil Kumar Sharma, Sr. Panel Counsel for UOI
in CWP-26564-2018.

Mr. Sunil Hooda, Advocate for
Mr. Samrat Malik, Advocate for private respondents
in both petitions.

Mr. S.P.S. Tinna, Addl. AG, Punjab-respondent No.3
in CWP-26564-2018

KULDIP SINGH, J.

By this common judgment, we shall dispose of above
mentioned two writ petitions i.e. *CWP-19472-2017* titled as '*State of*

Haryana through Chief Secretary vs. Dr. Rippudaman Singh Dhillon and ors' and ***CWP-26564-2018*** titled as ***'Union of India and others Versus Central Administrative Tribunal and ors'***. For brevity, the facts are being taken from CWP-19472-2017.

Petitioners are aggrieved by the order dated 3.3.2017 (Annexure P-1), passed by Central Administrative Tribunal, Chandigarh Bench, (for short 'the Tribunal') wherein the Tribunal has allowed the Original Application i.e. OA No. 060/00914/2014 filed by applicant-respondent No. 1 namely Dr. Rippudaman Singh Dhillon and ordered that pay of the applicant-respondent No. 1 be fixed taking into account the element of Non Practicing Allowance (NPA) to his emoluments in his previous service, the same being part of his '*pay*' through not '*basic pay*'. The grade pay shall also be accordingly fixed. It was further directed that the observations in *para 22* shall be taken into consideration while implementing the order. The said observations in *para 22* of the impugned order are reproduced below: -

“Having held that and on thoughtful consideration of the third issue with regards to the perpetuity or otherwise of this protection, we are of the clear view that perpetuating this advantage in fixation of pay for all times to come in the applicant's career will clearly be violative of equity and fairness vis-a-vis his other colleagues who have come from non-medical background. While his initial pay protection including NPA is justified following the principal of pay protection, continuing it at every subsequent stage when he pay band of the applicant will be refixed on his promotion, will lead to an advantage as if the applicant was still working as a doctor and was entitled to getting the NPA. We are of the view, therefore, that

the respondents should have the liberty to take a view at the next stage of his pay band/pay scale revision/refixation and should be free to take a call with regard to perpetuating this additional element of NPA that the applicant ought to be given at the first fixation of pay on his induction into IAS.”

The short facts which are required to be noticed for the purpose disposal of the present petition are that the applicant-respondent No. 1 namely Dr. Rippudaman Singh Dhillon was appointed as Medical Officer in the State of Haryana in November 2000. He was inducted into Indian Administrative Service (IAS) against the vacancies meant for officers serving in connection with affairs of the State vide Government of India notification dated 27.2.2013. He joined as such on 28.2.2013. Prior to his appointment to IAS, he was drawing basic pay of Rs. 34,288/- (Pay in PB+NPA @ 25%) in the pay band of Rs. 15600-39100 +NPA @ 25% + Rs. 7600/- Grade Pay and accordingly getting the following emoluments: -

a)	Pay in Pay Band	Rs. 34288/-	(Which includes Rs. 8,378/- as NPA)
b)	Grade Pay	Rs. 7600/-	
c)	DA on basic pay and NPA	Rs. 33,510/-	

The grievance of the applicant-respondent No. 1 is that after induction into IAS cadre when his pay was fixed, same was reduced by Rs. 15080/- on account of the fact that the NPA was excluded from the pay. Thus, his pay was reduced to Rs. 26890/- in the pay scale of Rs. 15600-39100/-. His pay grade was also accordingly reduced to Rs. 6600/- instead of Rs. 7600/-. It was claimed that new post which involved responsibilities of higher responsibility than those attached to previous permanent post. His

pay cannot be fixed at the lower stage rather it has to be fixed one step higher than that of his substantive pay in respect of the old post. The representation of the applicant-respondent No.1 in this regard was rejected by the Government.

The stand of the Government is that NPA is not the additional pay. Hence it need not to be treated as the part of the pay. Further the stand of the Government is that NPA is granted on account of non practicing allowance to the doctors when they are serving as doctors, therefore, after induction into IAS, NPA cannot be allowed. After hearing learned counsel for both the parties, the Tribunal passed the impugned order dated 3.3.2017.

We have heard learned counsel for the parties and have carefully gone through the case file.

The admitted facts are that applicant-respondent No. 1 was previously working as doctor and later on he was inducted into IAS. Now the question which arises for consideration is *as to whether his emoluments can be reduced while fixing his pay in the IAS?*

We are of the view that the reply of the same is in negative as held by the Tribunal. Admittedly, if one is given the higher responsibility his pay cannot be less than the previous post. The Tribunal has taken into consideration Rule 4 of the IAS (Pay) Rules, 2007. The Tribunal has also taken into consideration the instructions regarding grant of NPA attached to the medical post other than the post included in the Central Administrative Services. Herein NPA is to be treated as pay for the purpose of computing

dearness allowance, entitlement of travelling allowance and other allowances as well as the calculations of retirement benefits.

The Tribunal also considered the case law on the points and considered the authorities of the Hon'ble Supreme Court in **K.C. Bajaj and others vs. Union of India and others, 2014 (4) SLR 449** and **Col. B. J. Akkara (Retd.) vs. Government of India and others (2006) 11 SCC 709**; authority of the Tribunal in **Pritam Singh IAS Director Consolidation Punjab vs. Union of India and others 1990 (4) SLR** and authority of Gujrat High Court in **Special Civil Application No. 9615 of 2006** titled as **Mahesh Kumar Kapadia vs. State of Gujrat.**

The Tribunal has also drawn distinction between the case of the Medical Officer of State of Gujrat where under the Gujrat Civil Services (Revision of Pay) Rules, 1987, NPA was given statutory recognition for the purpose of inclusion of revision in the pay scale.

After considering the case law, Tribunal took right view of the matter that NPA should not be the part of the basic pay, however, it is part of the pay for the purpose of calculating the total emoluments. The Tribunal also drew distinction between the pay and the basic pay. The Tribunal has also taken into consideration that treating the NPA as part of the basic pay will perpetuate the advantage to the applicant vis-a-vis other colleagues who have come from non medical background.

However, it took the view that while fixing the initial pay inclusion of NPA is justified following the principle of pay protection but

same cannot be continued on any subsequent stage when the pay of the applicant is re-fixed its promotion.

The Tribunal drew the following conclusions: -

- 'a) There is judgment, neither to the best of our knowledge nor placed before us by the applicant that unequivocally holds that NPA has to be recognized as part and parcel of basic pay for all intents and purposes. The rulings discussed in preceding paragraphs have been given in unique contexts and their universality is not expressly stated.
- b) NPA as we have discussed earlier in this order is an allowance-a compensation for the income that the government doctors forego when they do not practice privately. It is comparable to any other allowance like House Rent Allowance or Medical Allowance. No other allowance is treated as part of basic pay.
- c) By treating the NPA as part of the basic pay, the additional financial advantage to the such applicants is perpetuated as it becomes a permanent part of his basic pay and entitles such persons to the consequential benefits accruing from this increased basic pay.
- d) The Rules in this regard do not provide for such a benefit explicitly and specifically. In case of the doctors of Gujrat Government, the state rules treated NPA as part of basic pay and therefore, the decision of the state of Gujrat denying the doctors the benefit of NPA while fixing DA was held to be wrong as this decision violated their own rules.'

We are of the view that there is a distinction between pay and the basic pay as drawn by the Tribunal. The NPA though not the part of the basic pay, is the part of the pay for the purpose of initial pay protection. The same is to be protected. However, the same protection cannot continue at every subsequent stage when the pay is re-fixed on promotion.

Therefore, we find that the Tribunal was justified in ordering

that pay of the applicant-respondent No.1 be re-fixed by taking into account the element of NPA to his emoluments in the previous service, same being part of his pay and not the basic pay. The grade pay is also to be accordingly fixed. The Tribunal has already taken precautions by directing the department to take into consideration the observations made in para No. 22. There is no illegality or infirmity in the impugned order dated 3.3.2017 (Annexure P-1), passed by Central Administrative Tribunal, Chandigarh Bench.

Both petitions are accordingly dismissed.

A copy of this order be placed on the connected file.

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

27.3.2019
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Whether speaking / reasoned	Yes
Whether Reportable:	Yes