

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Acting Chief Justice Sujoy Paul
And
The Hon'ble Justice Partha Sarathi Sen

WP.CT/475/2013

DR. SAMIR KUMAR ROY
VS.
UNION OF INDIA AND ORS.

For the Petitioner : Mr. Dibyendu Chatterjee, Adv.
Mr. Rahul Deb Goenka, Adv.
Ms. Satabdi Das, Adv.
Mr. Mainak Singha Barua, Adv.

For the respondents : Ms. Susmita Saha Dutta, Adv.
Mr. Niladri Saha, Adv.
Mr. Subhajit Seth, Adv.
Ms. Madhurima Basu, Adv.

Heard On : 01.12.2025

Judgment On : 01.12.2025

JUDGMENT (ORAL)

Per, Sujoy Paul, ACJ.

1. The order of Central Administrative Tribunal dated 19th June, 2013, passed in O.A. No.571 of 2011 is subject-matter of challenge before us in this petition filed under Article 226/227 of the Constitution.
2. Learned counsel for petitioner submits that the petitioner's juniors were given financial upgradation and petitioner was given promotion from a

subsequent date. At the outset, he fairly submits that the juniors against whom he preferred the said claim were not impleaded as party-respondents before the tribunal. However, pursuant to a leave granted by this court, said persons have been impleaded and served for the first time before this court.

3. It is submitted that petitioner was appointed as Medical Specialist, Grade-II (Junior Scale) in the scale of pay of Rs.3000-100-3500-125-5000 on 28th October, 1993. Then he secured promotion on the post of Specialist Medical Officer, Grade-II (Rs.3700-5000) on 10th April, 1998, Specialist Medical Officer, Grade-I (Rs.14,300-18,300) on 9th July, 2002 and Principal Medical Officer, Grade-I (Senior Grade) (Rs.14,300-18,300) on 1st January, 2003. In the year 2003 a combined seniority list of Specialist Medical Officer (Grade-I) was issued.
4. The principal contention of learned counsel for petitioner is that the petitioner is entitled to get the benefit of **Dynamic Assured Career Programme (DACP)** which was introduced with effect from 29th October, 2008. Petitioner upon completion of seven years regular service in Grade Pay of Rs.8700 was eligible to be considered under DACP. The Ministry of Health and Family Welfare issued a Memorandum dated 21st July, 2009, to clarify that a specialist with more than 13 years regular service and regularly promoted, can get the benefit of DACP without rendering full seven years of service in the Grade Pay of Rs.8700. The department promoted respondent Nos.8 to 16 on the post of Chief Medical Officer on 24th February, 2010, whereas petitioner was promoted to the post of Senior Specialist Medical Officer (Grade-II) with effect from 1st April, 2010, by order dated 26th March,

2010. The petitioner deserves promotion and seniority from 24th February, 2010, the date when his juniors were promoted.

5. Learned counsel for the petitioner by taking this court to the DACP dated 29th October, 2008, the pleadings and the prayer before the tribunal urged that the petitioner has a preferential right to get the benefit of said DACP from the date his juniors have been given i.e. 24.02.2010.
6. Learned counsel for the respondents supported the impugned order.
7. We have heard the parties at length and perused the record.
8. A plain reading of the prayer of present petitioner before the tribunal leaves no room for any doubt that he was claiming promotion as Senior Specialist and was not claiming any relief under DACP. The prayer clause is reproduced for ready reference:-

*“a) Amend, modify and/or review the order being Annexure A/ 1 so as to give effect to the **promotion as Sr. Specialist in Grade of pay of Rs.37,400-67,000** (in pay band 4) with Grade pay of Rs.10,000 w.e.f. 24.2.2010, if not retrospectively from 9.7.2009;*

b) Publish a combined seniority list in the stage of SAG i.e. Chief Medical Officer/Sr. Specialist on the basis of seniority in JAG sub cadres;”

(Emphasis Supplied)

9. Thus, there is no doubt that petitioner was claiming promotion as Senior Specialist. Therefore, the argument relating to applicability of DACP pales into insignificance. In other words, the promotion to the post of Senior Specialist is governed by Statutory Recruitment/Promotion Rules (Annexure-‘A/8’) dated 19th July, 2001. The relevant Schedule-I which prescribes the feeder post shows that for the promotional post in the Specialist cadre of Senior Specialist, the feeder post is Senior Medical Officer (Grade-I). The

petitioner himself filed his seniority list at page-21. Learned counsel for petitioner fairly admitted that in the feeder post, the present petitioner was appointed on 24th November, 1993, whereas Dr. Holey with whom parity is claimed was appointed on 28th December, 1984. Thus, by no stretch of imagination, it can be said that on the feeder post, the petitioner was senior to Dr. Holey. For the purpose of promotion, the seniority of feeder post is to be seen.

10. The petitioner cannot be permitted to make out a new case before this court.

If his pleading and prayer was confined to promotion on the post of Senior Specialist before the tribunal, he cannot twist the case to make out a case under DACP. No case is made out to establish that he was superseded or subjected to any arbitrary or discriminatory treatment. The tribunal has given justifiable and plausible reasons.

11. Resultantly, we hold that the petition is devoid of substance, it is accordingly **dismissed.**

12. No order as to costs.

(Sujoy Paul, ACJ.)

I agree.

(Partha Sarathi Sen, J.)