

January 6, 2026
Sl. No.17
Court No.1
s.biswas

WPCT 247 of 2025

Union of India and others
vs.
Dr. Diganta Kumar Das

Mr. D. N. Roy, Senior Advocate
Ms. Sayani Roy Chowdhury

... for the petitioners

Mr. Ujjal Ray
Mr. Arpa Chakraborty

... for the respondent

Per, Sujoy Paul, A.C.J.

1. Mr. D. N. Roy, learned Senior Advocate for the petitioners and Mr. Ujjal Ray, learned advocate for the respondent, are heard on admission.
2. This petition filed under Article 226 and 227 of the Constitution of India, takes exception to the order of Central Administrative Tribunal dated 30.01.2025 passed in O.A. 350/01550/2023 whereby the Central Administrative Tribunal, Kolkata Bench (Tribunal) allowed the original application and set aside the impugned order dated 7th November, 2023.
3. The admitted facts between the parties are that the original applicant/respondent herein previously served with Sashastra Seema Bal (SSB). The applicant and one Dr. K. S. Reddy while working with the SSB, were declared as surplus. Thereafter they were given appointment in the petitioner department.
4. The applicant preferred an application for grant of benefit of Dynamic Assured Career Progression

(DACP) Scheme by counting services rendered by him in the previous department, namely, SSB. The said claim was rejected by communication dated 7th November, 2023 (Annexure P-16), which became the subject matter of challenge before the Tribunal.

5. The Tribunal considered that similarly situated person Dr. K. S. Reddy filed O.A. 760/2014 before the Central Administrative Tribunal, Hyderabad Bench and the Tribunal allowed his application and directed that services rendered in SSB should be taken into account for the purpose of grant of DACP Scheme's benefit. The Tribunal further recorded that said order of Tribunal was unsuccessfully challenged by department before the High Court in CWP No.5953 of 2016. Thus, Tribunal directed to extend the same benefit to the present applicant, a similarly situated employee.
6. Criticizing the order of Tribunal, learned senior advocate for the petitioner submits that twin reasons for rejecting the claim mentioned in the impugned order dated 7th November, 2023 had not been considered by the Tribunal. Thus, the order of the Tribunal is vulnerable and liable to be interfered with.
7. Mr. Ujjal Roy, learned counsel for the respondent opposed the prayer and contended that on

principle of parity, the applicant deserves similar treatment and Tribunal has not committed any error in extending the same benefit. More so when the order of Hyderabad Bench of Tribunal in case of similarly situated employee has been implemented which is evident from the document at page no.176 of the writ petition. Thus, he supported the impugned order.

8. We have heard the learned counsel for the parties. The Tribunal recorded its findings as under:

“8. We have gone through the Order dated 21.07.2015 of the Hyderabad Bench of this Tribunal in O.A. No. 760 of 2014 in the case of Dr. K.S. Reddy, Senior Medical Officer (Homeo), Central Government, Health Scheme, Wellness Centre IV, Begumpet, Hyderabad Vs. Department of AYUSH and others (Annexure A-6). The operative part of the judgement is reproduced below:

"12. Having heard both sides counsel and after considering the facts and circumstances of the case, we are of the considered view that this OA. is squarely covered by the judgment of the Hon'ble Supreme Court in State of Haryana & Anr Vs. Deepak Sood & Others (supra). Hence, this OA is liable to be allowed by following the law laid down by the Hon'ble Supreme Court in Civil Appeal No. 4446/2008 & Batch. On the other hand, the judgment of the Hon'ble Supreme Court relied on by the respondents in Union of India & Ors. Vs. K. Savitri & Ors, is not applicable to the present case inasmuch as the said judgment is on the issue of counting of past service of the redeployed staff for seniority in the new organization.

*13. In the result, the O.A is allowed by holding that the applicant is entitled for counting the service rendered by him as **Medical officer in SSB Cabinet Secretariat** from 18.11.1997 to*

30.04.2007 for time bound financial upgradation under Dynamic Assured Career Progression (DACP) Scheme. Accordingly, the respondents are directed to consider the case of the applicant for financial upgradation under DACP Scheme by considering his past service from 18.11.1997 to 30.04.2007 as Medical Officer in SSB, Cabinet Secretariat. The respondents shall comply with the order within a period of two months from the date of receipt of copy of this order. No order as to costs."

9. The aforesaid order of the Hyderabad Bench of this Tribunal was challenged by the respondents in CWP No. 5953 of 2016, before the Hon'ble High Court but the same was dismissed vide order dated 03.03.2016 (Annexure A-7).

10. The applicant in this O.A. has submitted that Dr. K.S. Reddy, who was an applicant in the O.A. 760 of 2014, was also declared as surplus **along with him while he was working in SSB.** On perusal of the facts of the said OA as outlined in the aforesaid Order dated 21.07.2015 of the Hyderabad Bench of this Tribunal, in O.A. No. 760 of 2014 (Annexure A-6), we find that the applicant in this O.A is similarly circumstanced as Dr. K.S Reddy, who was an applicant in the said O.A. and is entitled to similar relief.

11. In the light of the above discussion, the impugned speaking order passed by the under Secretary to the Government of India, Ministry of Ayush, with the approval of the competent authority, vide Office Memorandum dated 7th November, 2023 is hereby quashed and set aside. The Original Application is allowed. There will, however, be no order as to costs."

(Emphasis Supplied)

9. This aspect of similarity is not disputed before us by learned counsel appearing for the department i.e. present respondent and Dr. K. S. Reddy, the applicant before the Hyderabad Bench in O.A. 760/2014 are similarly situated. Both were serving in SSB and were declared surplus simultaneously. Thereafter they joined the present department. In the case of Dr. K. S.

Reddy, the Hyderabad Bench of Tribunal had directed consideration of benefit of DACP Scheme by counting his services rendered in the previous department. The present applicant is similarly situated. In the case of ***Inder Pal Yadav and others vs. Union of India and others*** reported in ***(1985) 2 SCC 648***, the Apex Court opined as under:

“Therefore, some of the retrenched workmen failed to knock at the doors of the court of justice because these doors do not open unless huge expenses are incurred. Choice in such a situation, even without crystal gazing is between incurring expenses for a litigation with uncertain outcome and hunger from day to day. It is a Hobson’s choice. Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court.”

(Emphasis Supplied)

10. Since similarly situated employee Dr. K. S. Reddy got benefit from Hyderabad Bench of Tribunal and said order got stamp of approval from the High Court in CWP No.5953 of 2016, we find no reason to deprive the present applicant from the similar benefits. Otherwise, two similarly situated employees will be governed by two different parameters/criteria. This will certainly hit Article 14 of the Constitution of India.
11. The courts must eschew the benefit of negative equality. Once the order of Tribunal in the case of similarly situated employee, namely, Dr. K. S. Reddy is upheld by the High Court in CWP

No.5953 of 2016, it cannot be said that said benefit extended to Dr. K. S. Reddy falls within the ambit of negative equality.

12. The Tribunal, in our considered view, has taken a plausible view which does not warrant any interference. Accordingly, admission is declined. Petition is **dismissed**.

(Sujoy Paul, A.C.J.)

(Partha Sarathi Sen, J.)