

Dr. Chandra Shekhar Sahukar Vs. Union of India

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Court : Delhi

Decided On : Oct-14-2014

Judge : S.Ravindra Bhat

Appellant : Dr. Chandra Shekhar Sahukar

Respondent : Union of India

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

30. 07.2014 Pronounced on:

14. 10.2014 + W.P.(C) 2780/2011 DR. CHANDRA SHEKHAR SAHUKARPetitioner Through: Ms. Rekha Palli and Ms. Punam Singh, Advocates. Versus UNION OF INDIA Respondents Through: Sh. Sanjay Jain, ASG along with Sh. Amit Chaddha, Ms. Ruchi Jain and Ms. Nor Anand, Advocates. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE VIPIN SANGHI MR. JUSTICE S. RAVINDRA BHAT % 1. The petitioner, in these proceedings under Article 226 of the Constitution of India questions orders dated 09.09.2009 and 05.05.2010 of the Central Administrative Tribunal (hereafter the CAT), in O.A. No.242/2009 and R.A. No.120/2010 (in O.A. No.242/2009). The CAT rejected his claim for application of the Dynamic Assured Career Progression mechanism (hereafter DACP) to Veterinary Officers on the basis that the Central Pay Commission (hereafter CPC) recommended the same for only General Duty

Medical Officers (hereafter GDMOs) and Dental Doctors.

2. The facts surrounding the present writ are that the Union Ministry of Health & Family Welfare (hereafter "UOI") introduced a time bound promotion scheme for its doctors including various cadres W.P.(C) 2780/2011 Page 1 of the Central Health Services (hereafter CHS). This was termed as the DACP by the Fifth Central Pay Commission (hereafter referred to as Fifth CPC) with certain changes in the periodicity of promotion. The Fifth CPC recommended the application of the DACP to the officers of the CHS. It also recommended that there should be complete parity between Veterinary Officers, and GDMOs and Dental Doctors in terms of pay scales and career prospects.

3. Through a Notification dated 30.09.1997, the UOI accepted the Fifth CPC recommendations and granted parity of pay scales at the entry level of Veterinary Officers. In tune with the recommendations, the UOI also sanctioned Non-Practising Allowance at 25% of basic pay at par with GDMOs and Dental Doctors to Veterinary Officers through Memo dated 15.04.1998/04.05.1999. The UOI extended the benefit of the DACP, by prescribing parameters to govern promotions of various cadres of ISM&H doctors as available to GDMOs at that time, promotions of various grades of officers of the CHS, and promotions of Dental Doctors, based on principles of parity with GDMOs, through Memos dated 25.01.1999, 05.04.2002 and 25.08.2006 respectively. However, complete parity of pay scales, promotions and the benefits which were allowed to these doctors on implementation of the recommendations of the Fifth CPC, were not extended to Veterinary Officers.

4. The denial of complete parity in terms of pay scales and time bound promotions to Veterinary Officers was brought to the notice of the Sixth Central Pay Commission (hereafter referred to as Sixth CPC) by the Association of Veterinary Officers. The Sixth CPC W.P.(C) 2780/2011 Page 2 reiterated the complete parity principle endorsed by the Fifth CPC as justified and recommended its continuation without any limitation.

5. The Government accepted the recommendations of the Sixth CPC vide Central Civil Services (Revised Pay) Rules, 2008 in Part-B. Meanwhile the extension of

the DACP for all medical and dental doctors up to the Senior Administrative Grade received Presidential sanction. Veterinary Officers were again denied the extension of the mechanism. The Administrative Department of Animal Husbandry, Dairying and Fisheries agreed to extend the benefits of time bound promotions under the DACP to Veterinary Officers and sought concurrence from the Ministry of Finance - Department of Expenditure for the same, which was turned down by the latter through Memos dated 11.02.2009 and 21.10.2009. The Ministry of Finance noted that unlike for Dental Doctors, the Fifth CPC did not specifically recommend the extension of the DACP to Veterinary Officers.

6. A member of the Veterinary Officers Association filed an RTI application dated 05.04.2010 asking for the relevant portion of the Fifth CPC Report which specifically recommended extension of the DACP to Dental Doctors. The reply to the RTI application by letter dated 10.05.2010 accepted that no such specific recommendation was made by the Fifth CPC. The petitioner accordingly filed O.A. No.242/2009. The CAT, by its impugned order, dismissed the application holding that the Fifth CPC specifically recommended the DACP to Medical and Dental Doctors only, which was accepted by the Government, and not to Veterinary Officers. The Review application filed by the petitioner was also dismissed by the Tribunal. W.P.(C) 2780/2011 Page 3 7. The petitioner is aggrieved with the impugned order which, in relevant part, is as follows:

13. The law set in S.C. Chandra case (supra) would also apply to the present case. It is the Pay Commission as the expert body recommends the nature and extent of parity. Taking into consideration many factors the 5th and 6th CPC recommended parity for the Veterinary Officers with Medical and Dental Doctors which were implemented by the Respondents in respect of Pay and NPA. But the Pay Commission recommended the DACP to the Medical and Dental Doctors. It did not recommend DACP for the Veterinary Officer. It is noted that 6th CPC recommended the Modified ACP, accepted by the Government, is applicable to the Veterinary Officers including the Applicant. We hold the view that to what extent the parity needs to be applicable between the two groups come within the functional domain of the executive. To find out the same it is the Pay Commission which makes the comparative assessment and recommends to the executive to

decide. Our views are fortified with the observation of the Apex Court in the case between State of Bihar versus Bihar Veterinary Association [2008-11-SCC-60], decided on 22.2.2008 which is thus if the courts start disturbing the recommendations of the pay scale in a particular class of service then it is likely to have cascading effect on all related service which may result into multifarious litigation.

15. Taking into account totality of facts and circumstances of the case and the settled legal position, we come to the considered conclusion that the Applicant is not covered by the DACP in the 5th and 6th CPC and is covered under the Modified ACP Scheme under 6th CPC. In the result, the Original Application, being bereft of merits, is dismissed leaving the respective parties to bear their own costs.

(emphasis supplied) W.P.(C) 2780/2011 Page 4 8. The petitioner argues that the CAT did not appreciate that the Fifth CPC specifically recommended complete parity to Veterinary Officers with the GDMOs and Dental Doctors in terms of pay scales and career prospects. This was again endorsed by the Sixth CPC and by the Government in the CCS (Revised Pay) Rules, 2008. The Fifth CPC did not make any specific recommendation for application of the DACP to Dental Doctors. Therefore, the DACP was granted to them on the basis of the principle of their complete parity with GDMOs - a logic which ipso facto entitles Veterinary Officers to the DACP in terms of pay scales, career progression etc. Denial of the benefits of the DACP to Veterinary Officers is arbitrary, unreasonable and unjustified suffering from a serious non-application of mind.

9. The recommendation of the Fifth CPC contained in Paragraph 55.291 reads as follows:

55.291 On the question of upgrading the Veterinary Officers uniformly and bringing them at par with medical doctors, we observe that a degree in Veterinary Science is comparable to an MBBS degree and holders of those degrees in both cases are registered and authorised to practice medicine, authenticate health certificates and give evidence as experts under the Indian Evidence Act. We also feel that there is no apparent reason to keep one of the two categories in a lower status. We, therefore, recommend that posts requiring a degree of B.V.Sc & AH with

registration in the Veterinary Council of India as the minimum essential qualification may be placed in a common entry grade corresponding to the existing entry scale applicable to General Duty Medical Officers and Dental Doctors under the Government of India. Veterinarians should have complete parity with Dental and General Duty Medical Officers as given in Annexure 55.9 in terms of pay scales and career prospects. In the matter of NPA, there is a small difference in the slabs over which a rate is applicable, W.P.(C) 2780/2011 Page 5 resulting in Veterinary Officers getting lower NPA at some stages of the basic pay. In view of the suggested parity, educational and practice requirements, and the need to be available even outside duty hours for domestic and farm animal health care. We recommend that Veterinary Officers should also be paid a Non-practising allowance at the rate of 25% of their basic pay as has been recommended for medical doctors.

10. The petitioners also argue that the recommendations of the Fifth CPC had not been fully implemented. Veterinary Officers were repeatedly excluded from extensions of the scheme granted by the executive. Accordingly, they had been denied complete parity of pay scales and career prospects. The recommendation of complete parity was made in view of the demand for parity by the Veterinary Officers with Medical Officers in the matter of pay scales, career progression, NPA etc. as reflected in paragraph 55.290 of the Fifth CPC Report. It is manifestly evident that paragraph 55.291 of the Fifth CPC under the heading Parity with Medical Doctors recommends complete parity between Veterinary Officers and GDMOs in the matter of pay scales, career progression, status, NPA etc., the underlying basis being no apparent reason to keep one of the two categories in a lower status.

Complete parity was unequivocally endorsed by the Fifth CPC in paragraph 3.8.25 in the following terms:

3.8.25 The Fifth CPC had extended parity with General Duty Medical Officers and Dental Doctors to the post of Veterinary Officers requiring a degree of B.V.Sc. and A.H. along with registration in the Veterinary Council of India. This parity is justified and may need to be continued.

11. The UOI completely accepted the recommendation of the Sixth CPC and accordingly decided to bring the Veterinary Officers at par W.P.(C) 2780/2011 Page 6 with the GDMOs and Dental Doctors vide CCS (RP) Rules, 2008 in Part-B, the relevant extract of which is as follows:

Veterinary Officers requiring a degree of B.V.Sc. and A.H. along with registration in the Veterinary Council of India are to be placed on par with General Duty Medical Officers and Dental Doctors.

12. The petitioner, therefore, argues that the UOI was bound to enforce the complete parity principle and extend the benefit of the DACP to Veterinary Officers.

13. It is further argued that the reply to the RTI application filed by the Veterinary Officers Association confirmed that the Fifth CPC did not specifically recommend the application of the DACP to Dental Doctors, contrary to the claim made to that effect by the UOI, Ministry of Finance Department of Expenditure in response to the request made by the Administrative Department of Animal Husbandry, Dairying and Fishing, to extend the benefits of time bound promotions under the DACP to Veterinary Officers. It follows that the implementation of the DACP with respect to Dental Doctors is on the basis of the "complete parity" principle and there is no reason to deny the same to Veterinary Officers. The Fifth CPC did not confine parity within any specific contours and instead advocated complete parity in terms of pay scales and career prospects which necessarily includes promotions, status etc. The same principle was reiterated by the Fifth CPC without any rider. Therefore, the Veterinary Officers have been discriminated against and their Right to Equality under Art. 14 has been violated.

14. The respondent UOI argues that the Tribunals order is sound and should not be interfered with. It is submitted that while the Fifth W.P.(C) 2780/2011 Page 7 CPC stated that Veterinary Officers should have complete parity with GDMOs and Dental Doctors in terms of pay-scales and career prospects, it only specifically recommended the grant of the DACP to GDMOs, Specialists and Super-Specialists. This is stipulated in paragraph 52.15 of the Report.

15. The respondent further contends that while the Sixth CPC affirmed the continuation of the complete parity principle with respect to Veterinary Officers in paragraph 3.8.25, it clearly and unambiguously stipulated in paragraph 3.6.7 that the DACP was implemented for doctors in the CHS and few other cadres. Accordingly, the necessary conclusion to be arrived at is that while the CPC in both Reports granted parity to Veterinary Officers at par with GDMOs, it did not grant the DACP to Veterinary Officers. In addition, the Sixth CPC observed that the Modified Assured Career Progression Scheme (hereafter MACPS) was granted to the Veterinary Cadre instead of the DACP. The relevant portion of this observation has been reproduced below:

7.57.32 Time bound promotions on completion of 4, 9 and 13 years have been demanded for Veterinary Assistant Surgeons in Development Department of NCT of Delhi. The Commission has recommended a modified ACPS for all employees in Central Government. The scheme will also encompass the Veterinary Assistant Surgeons. No separate recommendation is, therefore, necessary in their case.

Analysis & Conclusions 16. The issue which requires resolution is whether Veterinary Officers have been discriminated against by the denial of the DACP by the UOI. W.P.(C) 2780/2011 Page 8 17. For a proper appreciation of the controversy, it is essential to highlight the following, based on a perusal of the Fifth and Sixth CPC Reports. The first is that neither Report specifically recommended the application of the DACP to Veterinary Officers. The Fifth CPC stipulated complete parity in paragraph 55.291 between Veterinarians, and GDMOs and Dental Doctors in terms of pay scales and career prospects. This regime was deemed essential and necessary to be continued by the Sixth CPC. However, neither Report explicitly recommends the application of the DACP in terms, to Veterinary Officers. Secondly, in a similar - if not entirely identical manner, the Fifth CPC did not expressly recommend the application of the DACP to Dental Doctors. In paragraph 55.215, the Fifth CPC recommended the application of the mechanism to only GDMOs, Specialists and Super-Specialists. This fact was acknowledged by the respondent in paragraph 3-D of its counter reply. Dental Doctors received the benefit of the DACP vide Government Memo dated 25.08.2006. The Sixth CPC confirmed in paragraph 3.6.7 that the DACP (as

recommended by the Fifth CPC) was implemented for CHS doctors and a few other cadres. These facts show that the CATs finding that the Fifth CPC specifically recommended the application of the DACP to Dental Doctors- is without foundation and therefore, incorrect.

18. In its impugned order, the CAT observed that it is for an expert body and not a court in the exercise of writ jurisdiction, to determine complete and wholesale identity (for deciding parity of pay and other terms of service of public servants and employees) and that it is for the executive to determine. Indisputably, the CPC is an expert body. Based on the express recommendations in the Fifth CPC, the UOI W.P.(C) 2780/2011 Page 9 implemented the DACP with respect to certain cadres of medical officers. However, the moot issue requiring consideration is whether Veterinary Officers are entitled to the DACP mechanism, in light of the fact that the executive decided to apply it to Dental Doctors by Notification dated 25.08.2006 in the absence of any express recommendation to this effect by the Fifth and Sixth CPCs as noted above.

19. The Supreme Court has defined parity in *South Malabar Gramin Bank v. Co-ordination Committee of South Malabar Gramin Bank Employees Union and South Malabar Gramin Bank Officers Federation & Ors*, AIR 2001 SC1028as follows:

The meaning of the word parity in the Concise Oxford Dictionary is equality; being at par; fact of being even or odd. In Law Lexicon Dictionary, the word parity has been defined to mean being on a par with; analogy; close similarity (as) by party of reasoning. In Webster Comprehensive Dictionary, the expression parity has been defined to mean equality, as of condition or rank; equivalent position; equal value; close resemblance.

20. In the same case, the Court proceeded to observe the following:

Though, we have upheld the contention of the appellant with regard to the power of the Central Government to decide the pay structure of the employees of the Regional Rural Banks, yet there cannot be any doubt that in so deciding, the Central Government would be duty bound to maintain the parity with the pay structure of the employees of the Nationalised Commercial Banks in the same

sense and spirit as Justice Obul Reddi decided and as was given effect to by the Union Government in the year 1987.

21. Keeping in mind this definition of parity what needs to be appreciated is that notwithstanding the considerations motivating the W.P.(C) 2780/2011 Page 10 Government to implement the DACP for Dental Doctors, the Fifth CPC expressly recommended complete parity between GDMOs, Dental Doctors and Veterinary Officers in terms of pay scales and career prospects.

22. By Notification dated 30.09.1997, the UOI accepted the recommendations of the Fifth CPC and granted parity of pay scales at the entry level of Veterinary Officers. In line with the recommendations, the UOI also sanctioned Non-Practising Allowance at 25% of basic pay at par with GDMOs and Dental Doctors to Veterinary Officers vide Memo dated 15.04.1998/04.05.1999. However, career prospects is of wide enough amplitude to encompass other factors such as status, time-bound promotions etc. which are addressed by the DACP and ought to be secured to Veterinary Officers to ensure complete parity.

23. The Central Government Notification dated 25.08.2006 does not outline the reasons or considerations motivating the Government to extend the DACP to Dental Doctors. The Government has only remarked that the matter regarding extending the benefit of Dynamic Assured Career Progression (DACP) Scheme for the Dental Officer working in Hospital and Dispensaries under the Ministry of Health and Family Welfare, has been under consideration of Government of India for some time. After careful consideration the Government of India have decided that hereafter promotion of Dental Officers to various grades will be as under:-

24. The Sixth CPC recommended the MACPS which would encompass Veterinary Officers too. The MACPS ensures three financial up-gradations after 10, 20 and 30 years of service. On the W.P.(C) 2780/2011 Page 11 other hand, the DACP ensures promotions after 4, 9 and 13 years of service. Further, the Sixth CPC itself observed in paragraph 3.6.7 of its Report that the DACP and ACPS cannot be equated and that the DACP ought to be extended to other categories of doctors:

The scheme of DACP is different from ACPS in the sense that the designation also changes under the former. The scheme, therefore, cannot be equated to that of ACPS. The scheme also does not suffer from any of the short-comings evident in the extant scheme of Assured Career Progression. Accordingly, DACP would need to be retained in its existing form. Further, the scheme would need to be extended to other categories of Doctors presently not covered under the scheme as similar career advancement has to be ensured for all Doctors whose basic work remains same irrespective of the organisation or service to which they belong. Accordingly, the Commission recommends that the DACP scheme recommended by the Fifth Central Pay Commission for different streams of doctors should be extended to all Doctors including those working in isolated posts. The promotions under DACP for other categories of Doctors will be guided by the same conditions as applied in case of Doctors working in Central Health Scheme.

25. Following this recommendation, the Government by Office Memorandum dated 29.10.2008 extended the DACP to all Medical and Dental Doctors in the Central Government whether belonging to organised service or holding isolated posts. Again, no reasons were supplied to support the extension of the scheme.

26. Although the Sixth CPC observed that there is no need to make a recommendation regarding the extension of the DACP to Veterinary Assistant Surgeons since they are covered by the MACPS, it has to be kept in mind, at the same time, that the Fifth CPC unequivocally recommended complete parity for veterinarians as a whole class- W.P.(C) 2780/2011 Page 12 with other doctors and medical practitioners' cadres. In view of this fact, there is no apparent reason for the classification and distinction made by the executive between Dental Doctors and Veterinary Officers to deny the latter the benefits of the DACP. The Fifth CPC unequivocally stated that a degree in Veterinary Science is comparable to an MBBS degree and that there is no apparent reason to keep one of the two categories in a lower status. The only requirements stipulated are posts requiring a degree of B.V.Sc & AH and registration in the Veterinary Council of India as the minimum essential qualifications. The Central Government's Notification extending the DACP to Dental Doctors is unreasoned. While it is correct that such a matter falls within the domain of the executive, any Government decision needs to be

supported by valid reasons so as to not be rendered arbitrary, capricious and unreasonable.

27. The respondent's argument is primarily hinged on executive supremacy in policy making, in the area of determining conditions of service, such as career progression programmes. This argument, when made, ordinarily prevails. However, when this is to be tested against a constitutional value such as the guarantee of equality and protection against discrimination, the principle which the Courts adhere to is that if the complaint establishes an apparent classification, that has to be justified. At the superficial level, no doubt, medical practitioners, i.e GDMOs of the CHS can be said to be distinct from veterinarians. Yet what is important is that both the Fifth CPC in its report (Paragraph 55.291) and the Sixth CPC in its report (Paragraph 3.8.25) recommended complete parity in respect of pay, allowances and "career prospects" to all categories of doctors. This was concededly W.P.(C) 2780/2011 Page 13 understood by the UOI to mean complete parity in such matters, to justify grant of such parity or equivalence to dentists and "Dental doctors" who, like the veterinarians did not find express mention in this regard. Having thus extended benefit to one category of medical practitioners- i.e. dentists- without any discussion, but the mere extension of the logic underlying the CPC's recommendation, the UOI should have shown why veterinarians differed and did not deserve such parity. Here too there is no explanation, save the power of the executive authority to formulate policy.

28. The right of equality before law spelt out by Article 14 of the Constitution of India directs that all individuals must be treated equally before law. In the present circumstances, the twin tests of reasonable classification and intelligible differentia are not satisfied in light of the facts on record. Since B.V.Sc & AH and MBBS degrees have been described as comparable, the holders of both degrees can be said to be similarly placed within the mandate of Art.

14. Further, any ambiguity or vagueness in the recommendations of the CPC ought to be resolved in favour of the petitioner to prevent Veterinary Officers from being unfairly prejudiced and discriminated against, and to protect their Fundamental Right under Article 14.

29. Having recognized a parity in regard to almost all matters, such as pay-scales, emoluments, Non-Practising Allowance, etc, singling out veterinarians for exclusion- which, in the present case, amounts to hostile discrimination- from the benefit of the DACP, offends Article 14. If viewed from the background of the circumstance that the expression "complete parity" occurring in the Fifth CPC recommendation was interpreted in both the letter and the spirit, in the W.P.(C) 2780/2011 Page 14 case of dentists, who got that benefit of the DACP, only on the strength of such phrase, whereas the veterinarians were denied that benefit without any reason at all, the discrimination is aggravated; it is utterly arbitrary.

30. The respondent's argument, i.e that veterinarians are classifiable differently from the other doctors, is, in the opinion of the court, a tenuous and unmerited one. This court here recollects the decision in *Roop Chand Adlakha and Ors. v. Delhi Development Authority & Ors.* [1988]. Supp (3) SCR253 a decision of the Supreme Court, which deals with the process of classification and points out how classification itself can produce inequality: "19.....The process would be constitutionally valid if it recognises a pre-existing inequality and acts in aid of amelioration of the effects of such pre-existent inequality. But the process cannot in itself generate or aggravate the inequality. The process cannot merely blow-up or magnify in-substantial or microscopic differences on merely meretricious or plausible differences. The over-emphasis on the doctrine of classification or any anxious and sustained attempts to discover some basis for classification may gradually and imperceptibly deprive the article of its precious content and end in replacing Doctrine of equality by the doctrine of classification. The presumption of good faith in and of constitutionality of a classification cannot be pushed to the point of predicating some possible or hypothetical but undisclosed and unknown reason for a classification rendering the precious guarantee of equality a mere rope of sand."

XXXXXX31 XXXXXX XXXX In the present case, there is no reason at all to say that veterinarians are different from other classes of medical and dental W.P.(C) 2780/2011 Page 15 practitioners- for the purpose of denying the DACP benefit- when they are treated at par with those categories in the matter of pay scales, allowances, special perks like Non-Practising Allowance, etc. Consequently, it is

held that the respondents acted in a discriminatory manner in refusing to extend the DACP to the petitioners and other veterinarians. The impugned orders of the CAT are accordingly set aside; a direction is issued to the respondents to ensure that the DACP is granted to Veterinary Officers on the basis of the CPCs recommendations' implementation to GDMOs and Dental Doctors from the date the latter category (Dental Doctors) were given that benefit.

32. The writ petition is allowed in the above terms without any order as to costs. S. RAVINDRA BHAT (JUDGE) VIPIN SANGHI (JUDGE) OCTOBER14 2014 W.P.(C) 2780/2011 Page 16

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