

SUPREME COURT OF INDIA

Union of India & Ors.

Vs.

K.P.Singh & Anr.

C.A.No.3798 of 2015

(D.Y.Chandrachud and A.M.Khanwilkar, JJ.,)

12.01.2017

JUDGMENT

A.M.Khanwilkar, J.,

1. The respondents in the aforementioned two appeals and the petitioner in the companion writ petition served as officers of Army Medical Corps, a Medical Service, under the Government of India, with more than 20 years of commissioned/Group-A gazette service. The Army Medical Corps is a cadre of Doctors serving in the Army, Navy and Air Force. It is an organized medical service of Central Government.

2. The respondents in the two appeals approached the Armed Forces Tribunal at New Delhi, by way of an Original Application contending that they were entitled to receive Dynamic Assured Career Progression as per the DACP Scheme, as approved by the Central Government. Even the writ petitioner in the companion writ petition has sought similar relief. He has prayed for a direction against the Central Government to implement the DACP scheme even in relation to the medical officers/doctors who are commissioned officers of the Armed Forces.

O.A. No. 488 of 2011 before the Armed Forces Tribunal at Chandigarh

3. An Original Application seeking similar relief was filed by one *Col. Sanjeev Sehgal*¹. The same was allowed by the Tribunal vide order dated 18th July 2011. In that case, the Tribunal had noted the stand of the department (appellants) that the matter regarding implementation of DACP scheme qua the doctors in AMC was still under examination. Further, the appropriate Authority was expected to take a decision in that behalf after examining the issue in due course. The Tribunal, however, proceeded to dispose of the said Original Application in the following terms:

“Heard the learned counsel for the both the parties and perused the documents

¹*O.A. No. 488 of 2011 before the Armed Forces Tribunal at Chandigarh*

including Annexures 1,2 and 3. There is no denial that the DACP Scheme is equally applicable to AMC Cadre. The scheme has already been implemented in several Departments. However, the same has not been implemented in the Armed Forces for the reasons best known to them and the matter is hinging for the last about three years. This is clearly detrimental to the interest of the AMC officers. It ought to have been implemented much earlier by the Ministry of Defence and the concerned authorities of Armed Forces. In the facts and circumstances, the Respondents are directed to issue instructions for the implementation of the DACP Scheme in the light of Annexures A-1 A-2 and A-3 attached with the application within three months from the date of receipt of copy of this order. With the above direction, this application stands disposed of'. This decision became final consequent to the dismissal of Civil Appeal filed by the Department before this Court.”

4. Relying on the said decision, the Tribunal allowed the two Original Applications filed by the respondents in the aforementioned appeals. The Tribunal also directed the department to issue instructions for implementation of the DACP Scheme and by placing the concerned respondents to the 4th financial upgradation of grade pay of Rs. 10,000/- under the DACP Scheme. The original application filed by the respondents in C.A. No. 3798 of 2015, was allowed by the Armed Forces Tribunal at New Delhi, being O.A. 178 of 2014, on 17th April, 2014. Similarly, the Original Application No. 108 of 2014 filed by the respondents in C.A. No. 3799 of 2015 was allowed vide order dated 9th April, 2014. The department has assailed these orders in the respective appeals.

5. When the present appeals were pending for consideration, the petitioner in companion W.P. No. 957 of 2014 approached this Court praying for the following relief:

“i. “Issue a mandamus for direction to the respondents thereby to implement the recommendations of 6th Pay Commission from the date of issuance of Official Memorandum (OM) dated 29.10.2008 issued by the Government of India, Ministry of Health and Family Welfare, CHS division, in Army Medical Corps (AMC) within a specific time;

ii. Pass any such other order(s) as deemed fit and proper to secure the ends of justice” .

6. It is an admitted position that the decision of the Armed Forces Tribunal, Chandigarh Bench in the case of Col. Sanjeev Sehgal (supra) was assailed by the appellants by way of Civil Appeal D.No. 14342 of 2013 before this Court. That was, however, summarily dismissed at the preliminary hearing stage on 23 rd September, 2013 by the Bench presided by Justice T.S. Thakur (as he then was). The order reads thus:

“Heard. Apart from the fact that there is an inordinate delay of 589 days in the filing of this application for grant of leave, we see no substantial question of law of

general/public importance arises for our consideration The prayer for leave to appeal is accordingly declined and the application dismissed” .

7. Nonetheless the present appeals and writ petition came to be admitted on 13th April, 2015 after due consideration, by a Bench of two learned Judges of which Justice T.S. Thakur (as he then was) was a member. Further, when the appeals and writ petition were pending and heard on different dates, the appellants were granted liberty to file further affidavits. Keeping in mind the stand taken by the department, this Court (presided by Chief Justice T.S.Thakur as he then was) vide order dated 11th December, 2015 permitted the appropriate Authority to revisit the matter afresh and take a decision as may be advised. Indeed, that was without prejudice to the rights and contentions of the parties in the present proceedings. Pursuant to the liberty granted by this Court, a formal decision has been taken at the highest level in the Ministry of Defence, Government of India which has been communicated to the Chairman, Chiefs of Staff Committee (COSC) vide letter dated 13 th January, 2016. We deem it apposite to reproduce the said letter in its entirety inasmuch as the department has reiterated the same stand in the two appeals as also to oppose the writ petition. The same reads thus:

“Annexure A-3
No. 10/1/201 O-D(Medical)
Government of India Ministry of Defence
Sena Bhavan, New Delhi-110011 Dated the 13th January, 2016

To,
The Chairman,
Chiefs of Staff Committee (COSC),
COSC Secretariat,
263D, South Block,
New Delhi.

Subject: Recommendations of the COSC regarding Dynamic Assured Career Progression (DACP) Scheme in respect of Defence Forces Personnel.

Sir,

I am directed to refer to the letter No.C/7026/6tt CPC/Vol. III dated 25.8.2015 of the Chairman, Chiefs of Staff Committee (COSC) on the above noted subject, and to say that as requested in the aforesaid letter, the COSC was given an opportunity to present the case of the Services for grant of DACP Scheme to all Defence Forces Officers alongwith the Armed Forces Medical Services (AFMS) Officers before the Hon’ ble Raksha Mantri on 08.01.2016. In the presentation made by the COSC, it was stated that the DACP Scheme, as recommended by the 6th Central Pay Commission (CPC) in para 3.6 of its report, is applicable to AFMS doctors also. The COSC also referred to para 12 of the Resolution No.1/1/2008-IC dated 29.08.2008, wherein, it has been stated that the DACP Scheme for doctors will be extended upto Senior Administrative

Grade (SAG) for Medical Doctors having 20 years of regular service, or 7 years of regular service in the Non Functional Selection Grade (NFSG) of Rs.8700/- grade pay in PB-4 and that all the medical doctors whether belonging to organized services or holding isolated posts will be covered by the DACP Scheme.

2. During the course of the presentation, the COSC was informed that since separate recommendations were made by the 6h CPC for Defence Forces Personnel, the recommendation made in para 3.6 is not applicable to the AFMS doctors as they are part and parcel of the Defence Forces. The COSC was also informed that the Resolution dated 29.08.2008 of the Ministry of Finance, Department of Expenditure is applicable only in respect of civilian government employees, as clearly stated in para 1 of the said Resolution and therefore, the recommendation made in para 12 thereof is applicable in respect of civilian doctors and not in respect of the AFMS doctors.

3. Further, the relevant aspects for grant of DACP to Armed Forces Medical Services (AFMS) officers, as also for grant of same Grade Pay to all Defence Officers, as recommended by the COSC have also been considered carefully.

4. Upon such consideration, the first significant aspect which has clearly emerged is that the DACP is not at all applicable to Commissioned Officers serving as doctors in AFMS Cadre, for more than one reason which are set out herein below:

(i) As per existing Govt. orders commissioned officers serving as doctors belonging to AFMS constitute a separate class in themselves. They have a separate treatment with regard to recruitment procedure, appointment, terms and conditions of their employment including promotions, pay structure etc. as contained in AI 74/1976 issued by the Govt. of India, Ministry of Defence. Being commissioned officers they are employed in the Indian Army, the Indian Air Force and the Indian Navy, i.e., Army, Navy & Air Force. They are unlike other civilian doctors serving in Directorate General of Armed Forces Medical Services (DGAFMS), who do not become commissioned officers and for whom separate Govt. orders exist regarding their terms and conditions of service.

(ii) Similarly, the procedure of appointment, terms and conditions of employment including promotions, pay structure etc. for other civilian doctors appointed in other Departments/Ministries of the Govt. of India are entirely different. These civilian doctors form/constitute a separate class. Their service conditions etc. are dealt with by the respective Ministries like Ministry of Health & Family Welfare, Ministry of Railways, Ministry of Home Affairs in cases of doctors in Para Military Forces like Border Security Force, Central Reserve Police Force etc. and are governed by CCS Rules etc.

(iii) Therefore, doctors who are commissioned officers in AFMS in the Indian Army, the Indian Air Force and the Indian Navy form a separate class. The successive

Central Pay Commissions have also dealt with them separately, in the recommendations made by them to Govt. of India. The recommendations are also made by the Central Pay Commissions providing separately for the civilian doctors dealt with by other Ministries/Departments such as Ministry of Health & FW. Ministry of Railways, etc.

(iv) In the present case, the doctors constituting AFMS who are Commissioned Officers in the Indian Army, the Indian Air Force and the Indian Navy are to be governed by the resolution/decision taken by the Ministry of Defence, Govt. of India on 30.08.2008 and not by the resolution/decision dated 29.08.2008 by the Ministry of Finance dealing with all civilian Government servants including doctors who are not commissioned officers in the Indian Army, the Indian Air Force and the Indian Navy.

(v) The existing sanctioned hierarchy of promotion for doctors joining the Indian Army, the Indian Air Force and the Indian Navy as commissioned officers is as under:

(a) Captain/Flight Lieutenant/Lieutenant

(b) Major/Squadron Leader/Lieutenant Commander

(c) Lieutenant Colonel/Wing Commander/Commander

(d) Colonel/Group Captain/Captain(Navy)

(e) Brigadier/Air Commodore/Commodore(Navy)

(f) Major General/Air Vice Marshal/Rear Admiral

(g) Lieutenant General/Air Marshal/Vice Admiral

(vi) As per existing Govt. orders issued by the Govt. of India, Ministry of Defence, promotion in Army Medical Corps(AMC) upto the rank of Captain, Major and Lt. Col and their equivalents in the Indian Navy and the Indian Air Force are by time scale subject to meeting the laid down criteria and substantive promotion to the ranks of Colonel, Brigadier, Major General and Lieutenant General and their equivalents in the Indian Navy and Indian Air Force will be by 'selection' to fill the vacancies authorized from time to time subject to the officer being found fit in all respects by appropriate selection board as approved by the competent authority.

(vii) In terms of para 10 of AI 74/1976, officers granted permanent commission in the Army Medical Corps will receive pay and allowances at such rates and under such conditions as are laid down in Pay and Allowances Regulations for Officer of the

Army, as amended from time to time by the Ministry of Defence, Govt. of India in consultation with Department of Expenditure, Ministry of Finance.

(viii) It is evident from record that before the 5th Central Pay Commission, doctors belonging to Central Health Service, Railways etc. had raised a grievance of stagnation, lack of promotional avenues etc. while dealing with terms and conditions of service and pay and allowances of doctors serving in Central Health Service (CHS), the Railway Health Service and the Indian Ordnance Factories Services, etc. the 5th Central Pay Commission noted that there was stagnation and lack of proper promotional avenues for such doctors in the aforesaid three services and as such, it recommended DACP for them. Therefore, for the benefit of doctors belonging to CHS, Railways, Indian Ordnance Factories Services-the DACP was recommended by the CPC only for the civilian doctors governed by the Ministry of Health & Family Welfare etc. in that category. This benefit was not extended to commissioned officers serving as doctors in the three Services being governed by separate norms including pay scales, promotions, etc. laid down by the Ministry of Defence.

(ix) It is also evident from record that the Ministry of Defence, Government of India, vide letter dated 28.10.2005, conveyed the sanction of the President to the reckonable commissioned service for promotion to the rank lieutenant Colonel and equivalent as 11 years and for promotion to Colonel (Time Scale) as 24 years. Thus, this letter was directed towards restructuring of Non-Select Ranks in commissioned officers cadre of AFMS.

(x) The above mentioned order dated 28.10.2005 was aimed at granting faster promotions to the commissioned officers doctors constituting a separate class. The difference in promotional avenues and hierarchical cadre, pay and allowances and other benefits of AMC officers vis-a-vis civilian doctors is tabulated and shown as below:

Doctors of AFMS as Commissioned officers in the Indian Army, the Indian Air Force and the Indian Navy Civilian Doctors under the Central Health Scheme etc. Governing resolution issued by the Govt. of India Ministry of Defence (MoD) vide No.1 (3)/2008-D (Pay/Services) dated 30.8.2008 Ministry of Health & Family Welfare dated 30.10.2008 issued pursuant to Ministry of Finance resolution dated 29.8.2008 Service conditions AFMS doctors are Commissioned Officers in Military Uniform and are therefore part of Armed Forces. All the service conditions in the matter of pay and allowances and service benefits applicable to other army personnel are applicable to AFMS doctors. Government by different set of terms and conditions of service as applicable under the applicable rules such as Central Civil Services (CCS) Rules etc. in respective Health services. Grade Pay (GP) Rs.6,100/- Rs.6,600/- Rs.8,000/- Rs.8,700/- Rs.10,000/- Rs.12,000/- After implementing the DACP scheme Rs.5,400/- Rs.6,600/- Rs.7,600/- Rs.10,000/- Promotional Avenue/hierarchy (i) Captain/Flight Lieutenant/ Lieutenant

(ii) Major/Squadron Leader/Lieutenant Commander

(iii) Lieutenant Colonel/Wing Commander/Commander

(iv) Colonel/Group Captain/Captain (Navy)

(v) Brigadier/Air Commodore/Commodore (Navy) After grant of DACP promotion avenues of civilian doctors are:

(i) Medical Officers

(ii) Senior Medical Officers

(iii) Chief Medical Officer

(iv) Chief Medical Officer (NFSG)

(v) SAG

(vi) Major General/Air Vice Marshal/Rear Admiral

(vii) Lieutenant General/Air Marshal/Vice Admiral

(viii) DGAFMS Other service benefits Military Service Pay @ Rest. 6000/-pm for all officers up to the rank of Brig in addition to Grade Pay, Outfit allowance, Kit Maintenance Allowance, Ration Money decided from time to time No such allowance/benefit is available to civilian doctors dealt with by the decisions of the Ministry of Health & Family Welfare.

(xi) It is evident from record that Armed Forces Personnel (Commissioned Officers) and Civilian Government employees are two different classes, the Central Pay Commissions (CPC) make separate recommendations for them. The 6th CPC also made separate recommendations with regard to 'Pay Scales of Defence Forces Personnel' (Chapter 2.3) and 'Allowances & Conditions of service of Defence Forces Personnel' (Chapter 4.10). Therefore, when the decisions was to be taken by the Govt. of India, Ministry of Defence with regard to recommendations of 6th Central Pay Commission regarding grant of pay and allowances etc. to the defence personnel, the draft resolution was examined by the Department of Expenditure, Ministry of Finance.

(xii) A note was issued by the Department of Expenditure on 29.08.2008 making it abundantly clear that the recommendation of Dynamic ACP has nothing to do with the doctors inducted as commissioned officers in the Indian Army, the Indian Air Force and the Indian Navy by, inter alia, observing as under:

“Ministry of Defence may please refer to Draft Resolution regarding implementation of the Government’s decision on Pay Commission’s recommendations relating to Officers of Defence Forces for vetting before issue.

2. A point (ix) has been added in the Draft Resolution regarding the enhanced Grade Pay for middle level officers (from Captain/Equ. To Brigadier/equ.).

3. In the annexure to the Resolution where revised pay scales have been indicated, for the sake of clarity and understanding, MOD may like to put two tables simultaneously one containing the recommendations of the Sixth CPC and the other showing final decision of the Government in this regard. Similar tables have been put in this Ministry’s resolution relating to civilian Government employees.

4. In the Annexure to the Resolution relating to Allowances concessions & benefits and conditions of service of Defence Forces personnel, against item 8, point no.(ii) relating to grant of Dynamic ACP to doctors has been deleted, as the same is not applicable to doctors in the Defence Forces’

(xiii) The above-mentioned unambiguous position incorporated in para 4 of the note dated 29.08.2008 of the Department of Expenditure to the effect that DACP Scheme has nothing to do and is not applicable to doctors (Commissioned Officers) in the Indian Army, the Indian Air Force and the Indian Navy, and was accordingly not mentioned in the eventual Resolution issued by the Ministry of Defence, Govt. of India on 30.08.2008 implementing the recommendations of the 6th CPC.

(xiv) Therefore, as in the past, two separate Resolutions were issued by the Government conveying the decisions on the recommendations of the 6th CPC. One Resolution was issued by the Ministry of Finance in respect of the Civilian employees vide resolution No.1/1/2008-IC dated 29.8.2008 and another Resolution was issued by the Ministry of Defence in respect of Armed Forces Personnel (including AFMS Commissioned Officers) vide No.1(30)/2008-D (Pay/Services) dated 30.08.2008.

(xv) The civilian doctors including civilian doctors in the AFMS (other than Commissioned Officers) are governed by the Resolution dated 29.08.2008 issued by the Ministry of Finance, Dept. of Expenditure read with the Circular by the Ministry of Health & Family Welfare dated 30.10.2008.

(xvi) As per Govt. orders the Resolution dated 29.08.2008 deals only with the civilian employees of the Central Govt. in Groups ‘A’, ‘B’, ‘C’, ‘D’ including civilian doctors in the DGAFMS (other than Commissioned Officers). The DACP Scheme for doctors in the Resolution dated 29.08.2008 dealt in para 12 is only with regard to civilian doctors including civilian doctors in the DGAFMS (other than Commissioned Officers).

(xvii) The Resolution of the Ministry of Defence dated 30.08.2008 is for Defence personnel including doctors who are appointed as 'Commissioned Officers'. Para 5 of the said resolution of the Ministry of Defence dated 30.08.2008 is reproduced as under;-

“ 5.The decisions taken by the Government accordingly on various recommendations of the Commission in respect of officers of Armed Forces are indicated in the statement at Annexure-I to this resolution The existing pay scales of Officers of the Armed Forces are indicated in the Statement at Annexure-II.....”

(xviii) Item No. 7 of Annexure-I and Item No.7 of Annexure-IB appended to the Resolution of the Ministry of Defence dated 30.08.2008 providing separately for the pay for AMC Officers and also payment of various allowances for the doctors working as commissioned officers in the Armed Forces.

(xix) it is also clear from the recommendations made by the 6th CPC in para 3.6.7 of its Report that 'the DACP Scheme recommended by 5" 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" is in respect of the Civilian Government employees. Accordingly, the same was mentioned in para 12 of the Resolution dated 29.08.2008 issued by the Deptt. Of Expenditure, Ministry of Finance which was in respect of the Civilian employees. In pursuance of this Resolution of Deptt. Of Expenditure, Ministry of Finance, the Ministry of Health & Family Welfare (M/o H&FW) vide their O.M. No.A.45012/2/2008-CHS.V dated 29.10.2008 extended the DACP Scheme to all medical doctors, whether belonging to organized services or holding isolated posts. Thus, it is clear that the O.M. dated 29.10.2008 of Mb H&FW is applicable only in respect of civilian doctors and not in respect of the AFMS doctors, as the AFMS doctors are part and parcel of Armed Forces Personnel.

(xx) However, for the civilian doctors of DGAFMS who are not commissioned Officers, Ministry of Defence issued a Circular dated 15.01.2009 making available for them the benefit of DACP Scheme. As per existing orders civilian doctors (who are not the Commissioned Officers) working as General Duty Medical Officers and Teaching Sub-Cadre in the DGAFMS are always dealt with and provided for with same service conditions/benefits which are decided in relation to other civilian doctors in Central Government services by the respective authorities such as Ministry of Health & Family Welfare, Railways, Ordnance Factories etc. and their service conditions decided by the Ministry of Defence, Govt. of India for the commissioned officers constituting AFMS Cadre.

(xxi) The doctors inducted as Commissioned Officers in the Indian Army, the Indian Air Force and the Indian Navy having at least 7 promotional positions in their

respective services i.e. Army, Navy and Air Force, having different pay scales etc. - have no concern whatsoever with the terms and conditions of service of the civilian doctors. As demonstrated above, this distinction between the category of doctors working as commissioned officers in the Indian Army, the Indian Air Force and the Indian Navy governed by the norms laid down by the Ministry of Defence and the civilian doctors governed by Ministry of Health & Family Welfare, Railways etc. - has always been well appreciated and acknowledged by the successive Pay Commissions including the 5th and 6th Central pay Commissions.

(xxii) The record of Court cases mentioned and sought to be relied upon by the COSC nowhere reveals that the above-mentioned clear and unambiguous distinction between these two categories of doctors, i.e. commissioned officers in the Indian Army, the Indian Air Force and the Indian Navy and civilian doctors were properly disclosed/placed/explained to the Hon' ble Armed Forces Tribunal (AFT), Chandigarh Bench while defending the OA filed by the Col. (Retd.) Sanjeev Sehgal for implementation of DACP Scheme for AFMS officers. These facts were also not placed before the Hon' ble Supreme Court in Civil Appeal D No.14342 of 2013. In the two subsequent court cases decided by the Ld. AFT, Principal Bench, New Delhi while defending the OAs filed by Col.(Retd.) Ajamal Singh Bhayal and Gp. Capt.(Retd.) K.P. Singh, again the true and correct facts in this regard were not placed before the AFT.

(xxiii) It is evident from the order dated 18.7.2011 in O.A. No.488 of 2011 passed by Ld. AFT. In other words, the inapplicable Resolution dated 29.8.2008 was placed and relied upon in O.A. No.488 of 2011 and the correct Resolution dated 30.08.2008 of the Ministry of Defence applicable in that case was not placed before the Ld. AFT.

(xxiv) When the above mentioned aspects came to be noticed, the matter was again examined and the case was taken up with the Ld. Attorney General for India, who advised the Govt. to file appeals before the Hon' ble Supreme Court of India in the two cases of Col.(Retd.) Ajamal Singh Bhayal and Gp. Capt. (Retd.) K.P. Singh

(xxv) Therefore, the official records of the Govt. clearly establish and demonstrate that doctors belonging to two different categories/classes are treated and provided for separately. It would therefore not be permissible to grant benefit of DACP (meant for civilian doctors including the civilian doctors in the DGAFMS) to the doctors inducted as Commissioned Officers in the Indian Army, the Indian Air Force and the Indian Navy.

(xxvi) The issue of grant of DACP Scheme with higher Grade Pay to doctors and higher Grade Pay to other commissioned officers of the three Services as recommended by the COSC is not only impermissible but also has far reaching serious huge financial and other structural ramifications for the Defence Forces.

(xxvii) The impermissible demand [by creating a confusion by not placing correct facts] for making available the benefit of DACP Scheme meant only for civilian

doctors including the civilian doctors in the DGAFMS to the doctors inducted as Commissioned Officers in the Indian Army, the Indian Air Force and the Indian Navy who are dealt with and provided for by the decisions of the Ministry of Defence, Govt. of India - has a potential of creating serious issues in the Indian Army, the Indian Air Force and the Indian Navy having 7 promotional avenues for doctors inducted as commissioned officers and are at par with the other non-doctors commissioned officers in the Armed Forces. Such an impermissible demand also inevitably carries with it a huge possibility of creating an irreversible imbalance in the working of the commissioned officers in all the Indian Army, the Indian Air Force and the Indian Navy in that, the hitherto existing same yardstick for doctors inducted as commissioned officers and non-doctor commissioned officers in various Arms and Services in all the three Services (approx. 70,000).

(xxviii) In fact, it is on record that because of these reasons the COSC also inter alia, observed in its earlier communication that grant of DACP to doctors in AFMS will adversely impact intra,-ca,dre Dynamics in respect of 70,000 Commissioned Officers. The COSC had also stated that the implementation of DACP should necessarily be in consonance with Service ethos and should subscribe and not upset the well established command and control structure.

7. It is reiterated that in view of the above mentioned clear distinction between two different classes of doctors i.e. Commissioned Officers in the AFMS and civilian doctors [not in the class of Commissioned Officers], there was never any recommendation by the 6th [being the appropriate body] for granting DACP to doctors recruited as Commissioned Officers in the three Services.

8. In view of the position stated above, it is clear that the DACP Scheme as brought out in M/o H&FW O.M. dated 29.10.2008, is not applicable for AFMS doctors working as Commissioned Officers in the three Services and therefore, the same had not been and cannot be extended to them.

9. This issues with the approval of Hon' ble Raksha Mantri.

Yours faithfully,

(D.K. Paliwal)

Deputy Secretary (Medical)”

8. The respondents in the two appeals and the petitioner in the writ petition, however contend that the decision of the Tribunal dated 18th July, 2011 in the case of Col. Sanjeev Sehgal (supra) having attained finality with the dismissal of the civil appeal preferred by the department before this Court on 25th September, 2013, it is not open to the department to contend to the contrary. Any new plea to be taken by department is hit by the principles of res judicata. Further, the department cannot be permitted to rely on new documents such as Memorandum dated 29th August, 2008 and 30th August, 2008 which were never pressed

into service in the earlier proceedings, that the department has acquiesced in the decision in Col. Sehgal's case (supra) consequent to the dismissal of the appeal against that decision by this Court, by not preferring any review against the decision of this Court. Also because, after the decision of the Supreme Court in the case of Col. Sehgal (supra), the department took positive steps and decided to act upon the direction given by the Tribunal - as is manifest from the office note prepared by Shri D.K. Paliwal dated 22nd September, 2014. That has been duly approved by the Defence Secretary, Shri R.K. Mathur on 10th September, 2014 and finally by the then Defence Minister himself on 13th September, 2014. With the change of Government, it is urged that it is not open to the new Government or the new Defence Minister to take a different view of the matter and more so in violation of the direction issued by the Tribunal and confirmed by the Supreme Court. It is contended that consequent to the decision of the Supreme Court rejecting the appeal preferred by the department in Col. Sehgal's case (supra), the direction given by the Tribunal (Chandigarh Bench) stood merged on the principle of doctrine of merger. Therefore, the decision now taken by the present establishment is in the teeth of the decision of the Supreme Court. It is submitted that the appeals filed by the department are not maintainable and in any case the department cannot be permitted to rely on documents which were not part of the record before the Tribunal when such a plea was not taken before the Tribunal either in the Original Applications filed by the respondents in the two appeals or in the previous round of proceedings in the case of Col. Sanjeev Sehgal (supra).

9. The respondents have also invited our attention to the incorrect certification given by the advocate on record that no additional facts, new documents or grounds have been taken in the appeal. On merits, it is contended that the recommendation made by the 6th Pay Commission does not expressly exclude the application of DACP Scheme to the Doctors in the Armed Forces Medical Services (AFMS). On the other hand, it is wide enough to include them. Therefore, extending benefit of DACP to Doctors in AMC as has been granted to other doctors in organized and unorganized sectors in the Central Government is imperative. They further contend that there is no distinction made by the order dated 15th January, 2009 between the sub cadre of civilian doctors and doctors belonging to the cadre of regular Armed Forces. Similarly, even the 6th Pay Commission makes no such distinction. In any case, such a discrimination is not permissible in law. They further submitted that the appeals filed by the department are devoid of merits and deserve to be dismissed; and instead a direction be given to the department to give the benefit of the DACP Scheme to doctors in the Army Medical Corps on the same terms as given to doctors in other sub cadres of AFMC vide order No.12017/CMO/DGAFMS/DG-2B/126/09/D(Med.) dated 15th January, 2009 and arrears be paid to them with 18 per cent interest per annum with effect from 29th October, 2008. The respondents and writ petitioners have also prayed for imposing exemplary costs on the department for pursuing untenable pleas.

10. The moot question for our consideration is: whether the medical doctors serving as Commissioned Officers in Armed Forces are covered by the Ministry of Defence's Resolution dated 30th August 2008 or Ministry of Finance's Resolution dated 29th August 2008? Secondly, whether that issue is conclusively answered by the Tribunal in Col.

Sehgal' s case (supra)? The decision of the Tribunal as upheld by this Court in the case of Col. Sanjeev Sehgal (supra), was in the context of the relief claimed for implementation of the Dynamic Assured Career Progression Scheme (DACP) as approved by the Central Government. In that case reliance was placed on para 3 of the Office Memorandum bearing No.F.No.A-45012/2/08-CH-V dated 29th October 2008 issued by the Ministry of Health and Family Welfare, Government of India. The said proceeding was contested by the department. The Tribunal noted the contents of the reply filed by the Department to oppose the said Original Application, wherein it was admitted that Government of India, Ministry of Health and Family Welfare has implemented the DACP Scheme in respect of Officers of Central Health Services and Medical/Dental Doctors in Central Government respectively. The Tribunal also noted the stand taken by the Department that the said scheme in Defence has not been implemented and the matter is under consideration at various levels before military authorities and depending on the decision to be taken at the appropriate level, necessary orders will be passed in due course. After having noticed this contention of the department, the Tribunal disposed of the Original Application vide order dated 18th July 2011, the relevant portion whereof has been extracted in the opening part of this judgment. That decision was challenged before this Court by way of Civil Appeal D.No.1434/2013, which was dismissed at the preliminary hearing stage on 23 rd September 2013. The order passed by this Court has also been extracted hereinabove.

11. On a fair reading of the said decision of the Tribunal dated 18th July 2011, all that it records is that there was no denial that the DACP scheme is equally applicable to AMC Cadre. Further, the Scheme has already been implemented in civil departments except in the Armed Forces. On that basis, the Tribunal issued a direction to the Department to issue instructions for implementation of the DACP Scheme in the light of the Office Memorandum dated 29 th October 2008 issued by the Ministry of Health & Family Welfare, dated 18th November 2008 issued by the Ministry of Finance and dated 27th November 2008 issued by the Ministry of Defence.

12. According to the respondents (in the aforementioned appeals), therefore, it is not open to the department to contend to the contrary or take any position which would inevitably result in over reaching the decision of this Court which has attained finality. The appellants, on the other hand, contend that the factual position recorded by the Tribunal is contrary to the official record, which, however, was not placed before the Tribunal or before this Court. In that, the correct factual position was not brought to the notice of the Tribunal and also this Court, in the Civil Appeal filed before this Court against the decision of the Tribunal. Nevertheless, considering the far reaching financial and structural ramifications for the Defence Forces and in larger public interest, it is essential to examine the core issue about the applicability of DACP Scheme to Commissioned Officers of Armed Forces. It is submitted that the department intends to proceed against the officials responsible for filing such inaccurate and deficient pleadings - which entailed in recording a finding that there was no denial that the DACP scheme is equally applicable to AMC Cadre. There is ample contemporaneous record to indicate that the Scheme was made applicable only to Civilian Doctors and not to Commissioned Officers serving in AMC Cadre. It is not a case of the

department approbating and reprobating, but a case of an inaccurate plea being taken before the Tribunal which led to the said finding. If the officials responsible for filing such pleadings, in the departmental action are found to have done it intentionally, it would be a case bordering on fraud. The recommendation made in respect of the DACP scheme by the 6th Pay Commission was limited to Civilian Doctors (not in respect of Commissioned Officers in three Services). Besides the resolution passed by the Ministry of Finance dated 29th August 2008, bearing No.1/1/08-IC made it explicit that DACP scheme was applicable only in respect of civilian employees in the organized and unorganized sectors employed by the Central Government as also in the All India Services and to Chairpersons or Members of regulatory bodies. Besides the said resolution, the Ministry of Finance, Department of Expenditure, Implementation Cell on 29th August 2008 vide its communication made it amply clear to the Ministry of Defence that the proposal regarding implementation of the Government decision of pay revision qua Officers of Armed Forces for grant of DACP to Doctors who are Commissioned Officers in AMC Cadre has been deleted as the same is not applicable to the Doctors in the Defence Forces. The Ministry of Defence accordingly, on 30th August 2008 issued a resolution extending the benefits of other allowances (other than DACP) for the Commissioned Officers in three Services as recommended by the 6th Pay Commission and approved by the Government. In other words, the appropriate authority had consciously not extended the benefit of DACP Scheme to Doctors who were Commissioned Officers in AMC Cadre. Further, according to the appellants the recommendation of the 6th Pay Commission to grant DACP to Doctors was limited to Civilian Doctors and not to Doctors who were Commissioned Officers in AMC Cadre. The 6th Pay Commission has provided a large number of other allowances to Commissioned Officers in AMC Cadre. It is stated that Armed Forces Medical Services is a tri - service organization i.e. those who are commissioned as Doctors can be employed in any of the three services, namely (i) Indian Army, (ii) Indian Navy, and (iii) Indian Air Force. Commissioned Officers are governed by Army Instructions 74/1976. It is submitted that doctors joining the three services as Commissioned Officers get the rank of :-

(i) Lt/Capt/Flight Lieutenant /Flying Officer

(ii) Captain/Major/Squadron Leader/Lt. Comdr.

(iii) Lt.Colonel/Wing Comdr./Comdr.

(iv) Colonel/Group Capt./Capt.Navy

(v) Brigadier /Air Cmdr./Cmdr.Navy

(vi) Major General/Air Vice Marshal/Rear Admiral

(vii) Lt.General/Air Marshal/Vice Admiral. Their promotion in AMC Cadre up to the rank of Captain, Major and Lt. Col. are by time scale subject to meeting the prescribed criteria and substantive promotion to the ranks of Colonel, Brigadier, Major General and Lieutenant General is by selection. As per para 10 of Army Instructions 74/1976, officers granted

permanent commission in the Army Medical Corps receive pay and allowances at the rates laid down in Pay and Allowances Regulations for officers of the Army, as amended from time to time by the Ministry of Defence, Government of India in consultation with Department of Expenditure, Ministry of Finance. On the other hand, the Doctors serving in Ministry of Defence are categorized as civilian medical doctors. In so far as civilian medical doctors are concerned, the Government has already extended DACP Scheme in terms of Circular issued by the Ministry of Defence dated 15th January 2009. The fact that no express denial was stated in the pleadings filed before the Tribunal cannot be construed as admission of the Department to extend DACP even to doctors working in AMC Cadre. If DACP Scheme is extended to doctors working in AMC Cadre, it would result in an anomalous situation. For, other Commissioned Officers working on the same rank would not be entitled for DACP considering the service conditions of the Commissioned Officers who are governed by the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 as the case may be. A distinction has always been made between AMC Cadre and other Medical Services in the Ministry of Defence. Even the previous Pay Commission reports maintained that distinction while making recommendations, as has been done by the 6th Pay Commission. The 6th Pay Commission has not expressly recommended application of DACP Scheme to Commissioned Officers in AMC Cadre, as can be discerned from the said report itself. While it has limited that recommendation to civilian employees it has not done so to doctors generally.

13. Reverting to the decision of the Tribunal in the case of Col. Sanjeev Sehgal (*supra*), in our opinion, the observation made therein will have to be construed in the context of the final direction issued to the Department. The authorities were directed to issue instructions for the implementation of DACP scheme in the light of Annexure A-1, A-2 and A-3 attached with the Original Application within three months from the date of receipt of copy of the order. That direction will have to be construed to mean that the authorities must act in accordance with law and extend DACP scheme even to the Commissioned Officers of AMC Cadre, if permissible in law. No more and no less. Therefore, this Court whilst dismissing the Civil Appeal on 23rd September 2011 observed that no substantial question of law of general/public importance arises for consideration. That decision cannot be given an expansive meaning so as to be read that de-hors the legal position, DACP scheme be extended even to doctors working as Commissioned Officers in AMC Cadre. Thus understood, it must follow that the issues raised in the present appeals by the Government and in particular by the Ministry of Defence are not concluded nor have they attained finality. On this finding, it may not be necessary for us to dilate on the possibility of an inaccurate reply affidavit having been filed before the Tribunal to oppose the Original Application of Col. Sanjeev Sehgal or for that matter the circumstances in which the appropriate Authority was inclined to implement DACP scheme qua Commissioned Officers in Armed Forces. It is possible that office note in that behalf was prepared on an erroneous assumption that the Court has directed that the DACP scheme be implemented even in the case of doctors working as Commissioned Officers in Armed Forces. We, however, leave it open to the department to proceed against the concerned officers who were responsible for creating such confusion and for filing an inaccurate affidavit and for not bringing on record

entire material relevant for deciding the principal question about the entitlement of doctors working as Commissioned Officers in AMC Cadre to receive DACP.

14. The next question is: whether this Court should itself examine the gamut of arguments regarding applicability of DACP Scheme even to Doctors serving as Commissioned Officers in AMC Cadre. Indeed, the entire material has now been placed before us, on the basis of which, it may be possible to answer the matters in issue. The appellants have relied on the Office Memorandum dated 29th August, 2008 issued by the Ministry of Finance and the resolution issued by the Ministry of Defence dated 30 th August, 2008. The former Office Memorandum including the Office Noting on the file at different levels, prima facie, indicates that there was a clear exclusion of applicability of DACP Scheme to Doctors working as Commissioned Officers in AMC Cadre. In addition, our attention has been invited to the reference made to the 6th Pay Commission and the specific recommendation made by the 6th Pay Commission for civilian doctors and separate recommendations for the Commissioned Officers of AMC Cadre. Since the Tribunal has not either in the case of Col. Sanjeev Sehgal (supra) or in the impugned decision examined all these aspects on its merits, we deem it appropriate to relegate the parties before the Tribunal for reconsideration of the entire matter afresh without being influenced by the observations made in the order passed in case of Col. Sanjeev Sehgal (supra) or the dismissal of appeal against that decision by this Court on 23rd September, 2011. We say so because we are of the considered opinion that the direction issued by the Tribunal in the case of Col. Sanjeev Sehgal (supra) to the Department for issuing instructions was obviously to decide the issue under consideration in accordance with law, on the question of applicability of DACP Scheme even to the Doctors working as Commissioned Officers in AMC Cadre. As noted in the earlier part of the judgment, controversy has far-reaching structural ramifications to the Armed Forces besides financial implications and the possibility of a discrimination within the cadre if additional benefit was to be given only to Doctors working as Commissioned Officers in AMC Cadre and not to other Commissioned Officers working on the same rank. This requires deeper consideration. For that reason, this Court during the pendency of these appeals had permitted the appropriate authority to examine the entire matter and take a necessary decision. Pursuant to that liberty, the Deputy Secretary (Medical) of the Ministry of Defence, Government of India, has informed of the decision of the Government vide communication dated 13th January, 2016 to the Chairman, Chiefs of Staff Committee (COSC). It would be open to the original applicants (respondents in the appeals) to question the correctness thereof in the remanded proceedings. This would provide an opportunity to both sides to pursue their pleas and also facilitate the Tribunal to examine the correctness of the position and answer the matters in issue appropriately.

15. For the nature of order we propose to pass, it is unnecessary to dilate further on the other contentions. To do substantial and complete justice to the parties, we leave all questions on merits open to be considered by the Tribunal in the first instance. In other words, we are not inclined to accept the grievance of the respondents in the appeals that the appellants should not be permitted to rely on new documents which were not part of the record before the Tribunal or for that matter incorrect declaration and affidavit filed in support of the present appeals. Instead, we give liberty to both sides to file further pleadings and place on record any further documents before the Tribunal.

16. The appellants must file a comprehensive affidavit accompanied by all the relevant documents on which they would like to place reliance to buttress the stand as to why DACP Scheme cannot be extended to Doctors engaged as Commissioned Officers in AMC Cadre. That affidavit be filed within four weeks from today. The respondents (original applicants) will be free to file a response to that affidavit within three weeks from the date of service of such affidavit on them. The Tribunal may endeavour to dispose of the remanded original applications expeditiously preferably within six months of the completion of pleadings.

17. As regards the writ petition filed under Article 32 of the Constitution, we dispose of the same with liberty to the writ petitioner to either intervene in the remanded proceedings before the Tribunal or to file a fresh Original Application for the relief claimed by him in the present writ petition, which can be decided by the Tribunal along with the other remanded original applications.

18. Accordingly, we partly allow the two appeals preferred by Union of India and thereby set aside the order(s) passed by the Tribunal in the respective appeals and instead remand the respective Original Applications to the Tribunal for reconsideration of the entire matter de novo.

19. Needless to observe, the Tribunal may decide all the remanded original applications or any further original application on the same subject matter analogously to avoid any conflicting decision and multiplicity of proceedings.

20. We grant liberty to the original applicant(s) to amend the pleadings, if so advised, including to ask for further relief. In that event, however, the Tribunal will give opportunity to the appellants (respondents in the Original Application(s)) to file a response to the amended pleadings and further relief, as the case may be.

21. Both the appeals and writ petition are disposed of in the above terms with no order as to costs.