



**UNION TERRITORY OF JAMMU & KASHMIR
DIRECTORATE OF HEALTH SERVICES, JAMMU**

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Subject:-O.A./1483/2023 titled Dr. Ajay Kumar Gupta Vs U.T. of
& K & Ors.

ORDER

Whereas, the above titled Original Application has been disposed of by the Hon'ble Tribunal, Jammu Bench, on 20-11-2023, with the judgment/order whose operative portion reads as under:-

“Accordingly, the Original Application is disposed of with a direction to respondents to treat this O.A. as representation of the applicant and decide the same by passing a reasoned and speaking order and communicate the order so passed to the applicant. While taking a decision in the matter, letter dated 17-10-2018 Annexure A-2 shall also be taken into consideration. The whole exercise shall be undertaken within a period of four weeks from the date of receipt of a certified copy of this order.”

And whereas, the applicant, Dr. Ajay Kumar Gupta, retired as Dy. Director (HQ) Health Services, Jammu, by filing the above titled Original Application has sought the following directions:-

- a. *Direct the respondents to make clarification issued by Finance Department bearing U.O. No. A/105(2K)-A-1092, dated 12-10-2018 followed by communication No. HME/Accts/168/2018, dated 17-10-2018 applicable in case of the applicant and accordingly direct the respondents to count the Non Practicing Allowance (NPA) as pay for the purpose of service (Salary) and retirement benefits as well as for the purpose of computation of dearness allowance.*
- b. *Direct the respondents to re-fix the pension of applicant w.e.f. November, 2017 by taking into account/computing the Non Practicing Allowance (NPA) for the purpose of pension.*

- c. *Direct the respondents to pay arrears on account of revision of pension by taking into account the NPA for the purpose of pension alongwith interest @ 9% per annum with effect from the date it became due till its realization.*
- d. *Any other relief which the Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the case.*

And whereas, the applicant has contended in the Original Application that after rendering long unblemished service he retired on superannuation, on 31-10-2017. The department processed his pension case and forwarded to the O/O Principal Accountant General (A&E) for sanction of Pension Payment Order on the basis of his last pay certificate. Accordingly, the respondents No.3 sanctioned Pension Payment Order in his favour. The applicant was getting Non Practicing Allowance but the same has not been treated as pay for the purpose of post-retirement benefits viz Pension and his pension was fixed without taking into account the Non Practicing Allowance. The applicant, Dr. Ajay Kumar Gupta has relied upon communication bearing No. HME/Acctts/168/2018, dated 17-10-2018 of the Administrative Department stating that matter regarding revision of Non Practicing Allowance was taken with the Finance Department who vide U.O. No. A/105(2K)-A-1092, dated 12-10-2018 clarified that Medical Officers/Faculty Members of Health and Medical Education Department in whose favour NPA is sanctioned or admissible under proper orders of competent authority, the amounts (NPA) shall w.e.f. 01-04-2018 be paid @ 20% of revised basic pay subject to certain conditions which are reproduced hereunder:-

- II. *For the period 01-01-2016 to 31-03-2018, the NPA shall continue to be paid at the pre-revised rates in pre-revised pay structure.*
- III. *NPA shall count as pay for the purpose of computation of dearness allowance only but not for the purpose of calculation of other allowances viz HRA, TA etc.*
- IV. *The NPA shall count as pay for the service (salary) and retirement benefits.*

And whereas, the Original Application, which has been treated as representation of the applicant, has been examined in light of Government Orders and notifications on the subject issued from time to time and observed that the Non Practicing Allowance

(NPA) was being paid to the applicant, Dr. Ajay Kumar Gupta, Dy. Director (retd), till his retirement, in terms of SRO-132, dated 23-04-1998 r/w SRO-290, dated 25-09-1998 and in these rules there was no element of counting of NPA as pay for service (salary) and retirement benefits.

And whereas, the Government issued a Notification under SRO-258, dated 05-06-2018 whereunder rules called Sher-e-Kashmir Institute of Medical Sciences Faculty Members (Revised Pay) Rules, 2018 came into existence and in these rules under Rule 6 (1), the doctors including faculty members of the Institute, w.e.f. 01-04-2018, were held entitled to Non Practicing Allowance (NPA) @ 20% of Basic Pay subject to the condition that the Basic Pay+NPA shall not exceed to 225000/- (fixed pay of the doctor) and further that the NPA for the period 01-01-2016 to 31-03-2018 shall be admissible drawn at the existing rates in the existing pay structure (existing Pay Band and Grade Pay) and Rule 6(2) of these rules provided that the NPA shall count as pay for all service and retirement benefits;

And whereas, subsequently a clarification with regard to revision of Non Practicing Allowance (NPA) in favour of Medical Officers/faculty members of Health and Medical Education Department came to be issued by the Administrative Department, Health and Medical Education vide communication No:-HME/Acctts/168/2018, dated. 17-10-2018 (Annexure A-2 to the O.A.) wherein it has been clarified that Medical Officers/Faculty Members of Health and Medical Education Department in whose favour NPA is sanctioned or admissible under proper orders of competent authority, the allowance shall, w.e.f. 01-04-2018, be paid @ 20% of revised basic pay subject to certain conditions, as envisaged in the communication, and the condition (iv) whereof provided that NPA shall count as Pay for the service (Salary) & retirement benefits.

And whereas, the communication, (Annexure A-2 to OA.), relied upon by the applicant whereunder clarification regarding counting of NPA as pay for the service (Salary) & retirement benefits has been given was issued on 17-10-2018 when the applicant had already retired from Government services on superannuation on 31-10-2017 and earlier to it there was no such provision of counting NPA as pay for all service and retirement benefits as such the communication dated 17-10-2018, which is issued after retirement of the applicant, is not applicable in the case of the applicant.

Now, therefore, the case of the applicant has been accorded consideration in compliance to the orders of the Hon'ble Tribunal passed in O.A./1483/2023 titled Dr. Ajay Kumar Gupta Vs U.T. of & K & Ors and found devoid of merit in view of the above stated factual position, hence rejected.

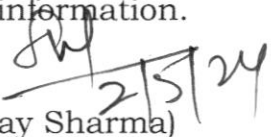
Sd/-
(Dr. Rakesh Magotra)
Director Health Services,
Jammu

No;-DHSJ/Legal/654-58

Dated: - 02/05/2024

Copy to the: -

1. Principal Accountant General (A&E), J&K, Shakti Nagar, Jammu for information.
2. Chief Accounts Officer, Directorate of Health Services, Jammu for information.
3. Private Secretary to Secretary to Govt., Health and Medical Education Department, Civil Secretariat, Jammu/Srinagar for information.
4. Health Education Bureau, Directorate of Health Services, Jammu to upload the order on official website.
5. Dr. Ajay Kumar Gupta S/O Late Sh. Jagdish Raj R/O Krishna Villas, Vill No. 1132-F, Sector-4, Ext. Trikuta Nagar, Jammu A/P H. No. 58, Ward No. 8, Brahman Mohalla, Near Gudhali Chowk, Kishtwar (sorcerro51@gmail.com) for information.


(Dr. Sanjay Sharma)
Dy. Director (Dentistry)
Health Services, Jammu