

**IN THE GAUHATI HIGH COURT**  
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,  
TRIPURA, MIZORAM & ARUNACHAL PRADESH)

**ITANAGAR PERMANENT BENCH**  
**NAHARLAGUN**

**WRIT PETITION(C) NO. 333 (AP) 2009**

Dr. James Mitum Boje,  
District Medical Officer (DMO)  
Upper Subansiri District,  
Daporijo, Arunachal Pradesh.

*.....Petitioner*

**By Advocates:**

Mr. P.K.Tiwari  
Mr. Tony Pertin  
Mr. A. K. Singh  
Mr. L. Tenzing  
Mr. S. Tapin

**-Versus-**

1. The State of Arunachal Pradesh through the  
Commissioner and Secretary, Department of  
Health and Social Welfare,  
Govt. of Arunachal Pradesh
  
2. The Commissioner & Secretary,  
Department of Health and Social Welfare,  
Govt. of Arunachal Pradesh,  
Itanagar.

*.....Respondents*

**By Advocate:**

Ms. G. Deka, Addl. Sr.G.A.

**BEFORE**  
**THE HON'BLE MR. JUSTICE P. K. MUSAHARY**

Date of hearing : 02.12.2010  
Date of Judgment & Order : 04.01.2011

## **JUDGMENT & ORDER (CAV)**

By this writ petition, the petitioner is mainly demanding second Time Bound Promotion(hereinafter referred to as 'TBP', in short) with retrospective effect from January, 1995, subsistence allowances with effect from 28.08.1999 to 10.07.2001 for the period he was placed under suspension on the basis of salary of Senior Medical Officer(SG) and treatment of compulsory retirement with effect from 11.07.2001 to 14.10.2005 as under suspension and payment of subsistence allowance for the said period on the basis of his salary of Senior Medical Officer(SG). The basis of aforesaid demands is under the following facts and circumstances -

**2.** The petitioner was initially appointed as Medical Officer under Government of India on 20.12.1985 and promoted to the post of Senior Medical Officer on 20.12.1989 under the Central Health Services(CHS), Government of India on 12.07.1993. He was absorbed in Arunachal Pradesh Health Service Cadre as Senior Medical Officer along with other similarly situated officers serving in Arunachal Pradesh under Central Health Services. At the time of such absorption, the service conditions of the officers of Arunachal Pradesh Health Service cadre were governed by the "**Arunachal Pradesh Health Service Rules, 1990**". Under the said Rules, the Senior Medical Officer with 5 years of regular service in the grade was eligible for promotion to the post of Senior Medical Officer(SG) on the basis of seniority-cum-fitness under TBP scheme without linkage to vacancies. The petitioner and other similarly situated Senior Medical Officers completed 5 years of regular

service in the year 1995 and they became eligible for promotion to the post of Senior Medical Officers (SG) but the promotion could not be given to them as the ACRs of those officers for the years 1993-99 were not available. In fact, no ACRs were maintained till the year 1999 on account of official laches or negligence and no punitive measures were taken against them so as to deny second TBP to the petitioner and other similarly situated Senior Medical Officer(SG).

**3.** While the petitioner was serving as Senior Medical Officer, he was placed under suspension by an order dated 28-09-1999 in contemplation of departmental proceeding on the charge of filing the nomination papers for contesting the State Assembly election. The disciplinary proceeding was initiated against the petitioner by issuing memo of charges dated 31-03-2001 for imposing major penalty under Rule 14 of **CCS(CCA) Rules, 1965**. The departmental proceeding finally culminated into imposition of major penalty of compulsory retirement by an order dated 10-07-2001.

**4.** The Arunachal Pradesh Health Service Rules, 1990 was replaced by "**Arunachal Pradesh Health Service Rules, 2000**" by a notification dated 01.07.2001 published in the Arunachal Pradesh Gazette dated 03.08.2001. The new service Rules of 2000 came into force with effect from 03.08.2001. So far the promotion of the cadre of Senior Medical Officer to the Senior Medical Officer(SG) is concerned the Scheme remains the same as was under the 1990 Rules. The eligibility criteria for promotion to the post of Senior Medical Officer (SG) on the basis of

seniority-cum-fitness under the TBP scheme without linkage to vacancies has been retained without any change.

**5.** The petitioner, by filing WP(C) No. 237 (AP) of 2003, challenged the aforesaid order dated 10.07.2001, by which punishment for compulsory retirement was imposed. While the said writ petition was pending disposal, the Government of Arunachal Pradesh by a common order dated 21.03.2005 gave second TBP as Senior Medical Officer(SG) to many Senior Medical Officers, some of whom were contemporary to the petitioner with effect from various retrospective dates between the month of January, 1995, to February, 1995 i.e. the dates on which the then Senior Medical Officers had completed 5 years of regular service in the grade without holding any DPC. The petitioner has been deprived of the second TBP to the post of Senior Medical Officer (SG) although he became eligible for the same.

**6.** In the meantime, the aforesaid writ petition challenging the punishment of compulsory retirement, was disposed of by a judgment and order dated 18-05-2005 quashing the order of compulsory retirement and directing recommencement of the disciplinary proceeding against the petitioner from the stage of submission of reply of the petitioner to the disciplinary authority with regard to the contents of the report of inquiry officer. It was made clear in the said judgment and order that the said direction would, in no way, be construed to be requiring reinstatement of the petitioner which would only follow if he is exonerated in the disciplinary proceeding or an appropriate decision to the said effect is taken by the disciplinary

authority. After *de novo* inquiry, in terms of the aforesaid judgment and order of this court, the disciplinary authority passed an order dated 05.10.2005 holding that the penalty of compulsory retirement imposed on the petitioner was unduly harsh and grossly disproportionate to the nature of violation of conduct rules committed by the petitioner. Consequently, the penalty of compulsory retirement imposed on the petitioner was altered/modified to the penalty to the extent of stoppage of 2(two) increments with cumulative effect with direction to reinstate the petitioner in service with all consequential benefits. Accordingly, the petitioner submitted his joining report as a District Medical Officer in the office of the Directorate of Health Services in the grade of Senior Medical Officer and his joining report was duly accepted thereby allowing him to work in the post of District Medical Officer.

**7.** The Director of Health Services, Arunachal Pradesh addressed a letter dated 26.12.2005 to the Director of Audit and Pension about the petitioner's entitlement to Senior Medical Officer (SG) with effect from 1995 inasmuch as his contemporaries were promoted to the post of Senior Medical Officers(SG) retrospectively with effect from 1995 and the petitioner had also completed the qualifying service on 21.12.1994 for second TBP. In the meantime, a DPC was held on 19.04.2006 to consider the TBP of two other left over Senior Medical Officers to the post of Senior Medical Officer(SG). The said DPC, treating the cut-off-date for second TBP as on 16.04.1990, recommended TBP to Senior Medical Officer(SG) in respect of 2(two)

Senior Medical Officers. The petitioner's case having not been considered, submitted representations dated 10.03.2007, 24.05.2007 and 26.06.2007 to the Respondent-Secretary, Department of Health and Family Welfare, Government of Arunachal Pradesh, Itanagar, for providing him same benefit of second TBP to Senior Medical Officer (SG). Another DPC was held on 30.03.2009. The said DPC decided that in view of penalty imposed upon the petitioner, the date of second TBP to the post of Senior Medical Officer(SG) would be the date immediately after the expiry of penalty of stoppage of two increments with cumulative effect and the actual benefit of higher pay scale would be given only from the date of holding the DPC with no arrear and allowances be paid on account of promotion. Pursuant to the said recommendation of the DPC, the petitioner was given second TBP to the post of Senior Medical Officer(SG) in the scale of pay of Rs.12,000-16,500/- p.m.(pre-revised) with effect from 02.11.2006. It was provided in the notification that the benefit of higher pay would be drawn by the petitioner from the date of holding the DPC i.e. 30-03-2009 in terms of the Government policy on second TBP and no arrear and other allowances shall be paid to him and his pay shall be fixed under the provision of F.R. 22(1)(a)(2).

**8.** I have heard Mr. P.K. Tiwari, learned counsel for the petitioner and also heard Ms. G. Deka, learned Additional Senior Government Advocate for the official respondents.

- 9.** Mr. Tiwari, learned counsel, raises the following issues:-
- (1) Whether the petitioner could have been denied the benefit of second TBP as Senior Medical Officer(SG), which was given to his contemporaries Senior Medical Officers vide order dated 21.03.2005, with retrospective effect from January/February, 1995.
  - (2) Whether the treatment of the period of petitioner's compulsory retirement with effect from 11.07.2001 to 14.10.2005 as on Extra Ordinary Leave(EOL) without pay is tenable in law.
  - (3) Whether the Notification dated 15.05.2009 granting Senior Medical Officer(SG) to the petitioner with effect from 02.12.2006 thereby linking the date of expiry of the penalty of stoppage of 2(two) increments with cumulative effect to petitioner's entitlement to the post of Senior Medical Officer(SG) is tenable in law and;
  - (4) Whether the order dated 15.05.2009 granting him Senior Medical Officer(SG) from 01.12.2006 with cash benefit of pay scale of the selection grade only from the date of DPC dated 30.03.2009 is legally tenable.
- 10.** In regard to issue No.1, it is submitted that under the Arunachal Pradesh Health Service Rules, 1990(for short '1990 Rules') the petitioner completed 5 years of regular service in the grade of Senior Medical Officer in December, 1994 and as such he became eligible for Senior Medical Officer(SG) under the TBP scheme. The benefit of

Senior Medical Officer (SG) being on the basis of seniority-cum-fitness without linkage to vacancies, ought to have been followed in a regular course in the year 1995 itself. The plea of the department that due to non-availability of ACRs the benefit could not be given is quite irrelevant inasmuch as the ACRs have no relevance in granting the benefit of Selection Grade. Secondly, as on 1995, since no departmental proceeding was pending against the petitioner, the benefit of Senior Medical Officer(SG) could not be denied to him. The eligibility of the petitioner for the benefit of Senior Medical Officer(SG) ought to have been considered on the basis of the situation prevailing in the year 1995 and not on the basis of initiation of departmental proceeding against the petitioner, which commenced on 31.03.2001 when the memo of charge was issued. Thirdly, the granting of selection grade is not a promotion *stricto sensu* because selection grade is essentially a sanction of higher scale of pay in the same category of post and it is sanctioned with the object of providing incentive to employees having no outlets for promotion to higher post. It carries a higher scale of pay even though there are no changes in duty, as per the rulings in **Lalit Mohan Dev Vs. Union of India**, reported in **(1973) 3 SCC 862** and **Union of India Vs. Luit Hulka**, reported in **(1999)9SCC 273**.

11. In regard to second issue, it is submitted that since the punishment of compulsory retirement was interfered with by this court in judgment and order dated 18.05.2003 with direction for de novo inquiry from the stage of submission of reply by the petitioner against the contents of inquiry report, the period of compulsory retirement from

11.07.2001 to 14.10.2005 ought to have been treated to be a period under suspension during which the petitioner ought to have been paid subsistence allowance @ 70% of his salary as Senior Medical Officer or Senior Medical Officer(SG) as the case may be. Secondly, by the effect of aforesaid judgment and order of this court, the departmental proceeding against the petitioner was revived. For revival of departmental proceeding, existence of *vinculum juris* between the petitioner and the respondents is sine qua non. This means that during the relevant period, the petitioner was a govt. servant although he was facing departmental proceeding. The petitioner, therefore, ought to have been treated under suspension and not on Extra Ordinary Leave(EOL) without pay which has robbed him even of the amount of subsistence allowances. Thirdly, EOL without pay cannot be a substitute for suspension. Whenever a govt. servant is made to face departmental proceeding, he can at best be treated under suspension and he should be paid subsistence allowance as provided under the rules. The government servant could be on EOL without pay only in a situation when he is not under cloud i.e. not facing any departmental proceeding but at the same time also, not discharging his duties. Fourthly, since penalty of compulsory retirement has been interfered with by this court due to laches on the part of the department, the department could not have taken advantage of it by treating the petitioner's said period as EOL without pay treating the same as a period under suspension.

12. In respect of issue No.3, it has been submitted that the order dated 15.05.2009 was issued on the basis of recommendations of the DPC held on 30.03.2009. The said DPC was of the view that since the penalty of the stoppage of 2(two) increments with cumulative effect could have been effected only after petitioner's reinstatement in service in October, 2005, the petitioner would have earned the first increment on 01.12.2005 and the next increment on 01.12.2006. Therefore, the period of penalty of stoppage of 2(two) increments could have been held to have expired on 02.12.2006. Consequently, 02.12.2006 being the date immediately after the expiry of penalty of stoppage of two increments with cumulative effect, the petitioner's claimed promotion to Senior Medical Officer(SG) could have been made with effect from 02.12.2006 only. The recommendation of the DPC was erroneous inasmuch as there could not have been any linkage between the petitioner's entitlement to Senior Medical Officer(SG) with effect from January-February, 1995, and expiry of the period of penalty of stoppage of 2(two) increments on 01.12.2005 and 01.12.2006. Secondly, there being no departmental proceeding pending against the petitioner when he became entitled to Senior Medical Officer(SG) in January/February, 1995, the events arising at a later point of time getting culminated into departmental proceeding leading to imposition of penalty could not have been allowed to retrospectively effect the petitioner's entitlement to Senior Medical Officer(SG) from the date he acquired eligibility for the same. To bring home this point, Mr. Tiwari would rely on **Union of India Vs. K. V.**

**Janakiraman**, reported in **AIR 1991 SC 2010** and **Coal India Limited & Ors. Vs. Saroj Kumar Mishra**, reported in **(2007)9 SCC 625**.

**13.** As regards the last issue, it is submitted that since the petitioner could not have been held responsible for delayed holding of the DPC, granting of benefit of pay scale of selection grade cannot be linked to the date of sitting of the DPC as mandated in **P.N. Premachandran Vs. State of Kerala & Ors.**, reported in **(2004) 1 SCC 245**.

**14.** Ms. G. Deka, learned Addl Sr. Govt. Advocate, in her counter arguments, submits that as per the rule 10 of CCS(CCA) Rules, 1965 and Govt. of India's decision No. GLMHADP and AR O.M. No. 21011/2/78-Estt(A) dated 16.02.1999 where the departmental proceedings have ended with imposition of a minor penalty the promotion can be made only after the expiry of the penalty. The reinstatement in the case of the petitioner does not mean that he was exonerated from the penalty and hence, after penalty was over, he was given benefit of TBP. According to her, it is the settled position under the CCA(CCS) Rules that while the case of an officer under suspension is kept under sealed cover, his case should be considered for promotion immediately after exoneration or the period of penalty expires. In such case, he should be given notional promotion only and his seniority position should be placed above his juniors. The monetary benefit of such promotion can be given only from the date of actual promotion. As regards claim of suspension allowances by the

petitioner, it is submitted that under Rule 10(s) or Rule 10 (4) of the CCA (CCS) Rules, 1965, the government servant are deemed to be under suspension and be paid subsistence allowance under Rule 53 with retrospective effect from the date of order of removal/dismissal or compulsory retirement. There are two kinds of suspension. One is interim suspension during departmental inquiry is continuing and the other is penalty suspension after the departmental enquiry. In the present case, the petitioner was not exonerated in the departmental proceeding and therefore, his period of suspension cannot be said to be an interim suspension and hence, he is not entitled to get the subsistence allowance for the aforesaid period. The petitioner's period of suspension was regularised after reinstatement under CCS Leave Rules, 1972. Reference has been made to **Umesh Ch. Mishra Vs. Union of India**, reported in **1993 Suppl (2) SCC 210**.

**15.** As regards the second TBP, placing the relevant records, Ms. Deka submits that there are number of Senior Medical Officers who were not promoted to the posts of Senior Medical Officer (SG). It is not only the case of the petitioner but there are other Senior Medical Officers who were not promoted to Senior Medical Officers (SG) due to non-holding of the DPC. According to her, holding of DPC is a must for promotion to Senior Medical Officer(SG). This is because if the petitioner is allowed promotion under TBP scheme without holding any DPC, then hundreds of Senior Medical Officers would claim for promotion to Senior Medical Officer(SG) under the TBP Scheme by virtue of completing the 5 years tenure. She also submits that since

duties and responsibilities of the Senior Medical Officer (SG) are same, they would be entitled to get benefit of additional increment on the basis of provisions under F.R. 22(1)(a)(2), as settled in **Sayed Abdul Quadir Vs. State of Bihar, 2009(3) ALL SLJ 38**. In the aforesaid facts and circumstances of the case, according to Ms. Deka, learned Addl. Sr. Govt. Advocate, the notification/speaking order dated 09.05.2005 passed by the respondent-Commissioner, Department of Health and Family Welfare, Government of Arunachal Pradesh, Itanagar, is not liable to be interfered with inasmuch as there is no infirmity and illegality in the said order and the petition is liable to be dismissed.

**16.** I have seriously considered the pleadings and submissions of the parties along with materials made available on records. First of all, it may be noted that the petitioner was in the Central Health Service and he was absorbed in the State Health Service and by virtue of the provisions made in the 2000 Rules, the services of the petitioner prior to commencement of the aforesaid rules of 2000, were deemed to have been absorbed and also accepted as member of the State Health Service in the respective cadre. Accepting this position, it has been stated in Paragraph 5 of the affidavit-in-opposition filed by the Respondent Nos. 1 & 2 that the second TBP of the Senior Medical Officers to Senior Medical Officer(SG) under the State Health Department was ordered by an office order No. HFW-20/2003/21-84 dated 14.04.2005 as per the 2000 Rules without any linkage to vacancies by the DPC along with their respective TBP due on date as specified in the said letter. As per averments in the counter affidavit,

the petitioner was due for promotion to Senior Medical Officer(SG) in 2005 along with others and it was accepted but the said second TBP could not be considered at that point of time inasmuch as the petitioner has been charge sheeted in departmental proceeding relating to financial irregularities in the year 1999 and punishment of compulsory retirement was imposed on him but along with this, the State respondents have taken another ground that the second TBP could not be given as their ACRs for the entire period of service as Medical Officers during 1993-99 under the Central Health Service and State Health Service were not available.

**17.** The petitioner was ultimately reinstated in service with penalty of stoppage of 2(two) increments with cumulative effect giving him all consequential benefits by an order dated 05.10.2005. The undisputed position that emerges is that the petitioner is entitled to second TBP to Senior Medical Officer(SG) along with other similarly situated persons who have been granted second TBP. The crux of the matter, in the aforesaid facts and circumstances, is whether the petitioner is entitled to get second TBP in the post of Senior Medical Officer (SG) as was granted to similarly situated 48 numbers of Senior Medical Officer by a common order dated 21.03.2005 which was done without any recommendations by the DPC or without holding DPC. The petitioner was undoubtedly placed under suspension by an order dated 28.09.1998 i.e. much after he attained eligibility for second TBP. In fact, the Director of Health Services, Arunachal Pradesh by his order dated 26.12.2005 observed that the Senior Medical Officers are entitled to get

the second TBP to the Senior Medical Officers(SG) and the petitioner was due for second TBP on 21.12.1994(F/N) in the pre-revised scale of Rs.3,700-5,000/-p.m. and the petitioner's promotion to the post of Senior Medical Officer(SG) is to be accepted w.e.f. 21.12.1994(F/N). Subsequently, the Respondent-Commissioner by a notification dated 15.05.2009 allowed the second TBP to the petitioner in the scale of pay of Rs.12,000-16,500/- p.m.(pre-revised) with effect from 21.12.2006 being the date immediately after the expiry of the penalty of stoppage of 2(two) increments with cumulative effect imposed on him earlier by order dated 05.10.2005(Annexure P/8 to the writ petition) as the benefit of higher pay would be drawn from the date of DPC i.e. 30.03.2009 as per the government policy in all such cases of second TBP without any arrear and allowances on account of such promotion. It is surprising that the impugned order dated 15-05-2009 aforesaid, although goes directly against him, in the prayer of the writ petition, the same has not been sought to be quashed or set aside. In the prayer, the petitioner has sought only for - (i) grant of second TBP retrospectively with effect from January, 1995; (ii) subsistence allowance for the period with effect from 28.08.1999 to 17.07.2001 on the basis of salary of Senior Medical Officer(SG) treating the petitioner to be under suspension during the said period in the grade of Senior Medical Officer(SG); and (iii) to treat the period of his compulsory retirement with effect from 11.07.2001 to 14.10.2005 to be under suspension and payment of subsistence allowance to him in the said period on the basis of his salary of Senior Medical Officer(SG).

**18.** In 1995, the petitioner undisputedly completed 5 years of regular service in the grade of Senior Medical Officer. If one have a glance of the common order dated 21.03.2005(Annexure P/2 to the writ petition), he would find that many officers have been given second TBP with effect from 18.08.1998 whereas the petitioner was placed under suspension only on 28.09.1999. If it is so, it is not understood as to why the petitioner was left out of consideration and deprived of the second TBP. The departmental proceeding culminated on 31.03.2001 and the penalty of compulsory retirement was imposed on him only on 10.07.2001 followed by an order of revocation of suspension order. The question, thus, arises whether it is justified on the part of the State respondents in depriving the petitioner's second TBP which was given by the aforesaid order dated 21.03.2005 to many junior officers even as on 18.08.1998. The action of the respondents is against the law laid down by the Apex Court in a catena of cases to the effect that every civil servant has a right to be considered for promotion according to his turn as guaranteed under Articles 14 and 16(1) of the Constitution of India. Aptly, for the purpose of disposal of this case, one may refer to **C. O. Arumugam & Ors. -vs- State of T. N. & Ors.**, reported in **1991 Supp(2) SCC 199**, wherein it is held as under –

**“5. As to the merits of the matter, it is necessary to state that every civil servants has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Articles 14 and 16 of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principles. The promotion of persons against whom charge has been framed in the disciplinary proceedings**

***or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall be given the promotion with retrospective effect from the date on which their juniors were promoted."***

19. The facts narrated above, clearly reveal that there was no departmental proceeding against the petitioner till 30.03.2000 and whereas he became eligible for second TBP as far back as on 21.12.1994 and his juniors who became eligible on 09.02.1995, 10.05.1996, 08.07.1996 and much after on 18.08.1998 were considered and allowed second TBP without any linkage to vacancies on seniority-cum-fitness basis, the petitioner was apparently kept outside consideration along with other officers simply because at the time when the consideration for second TBP started, he was placed under suspension or a departmental proceeding was initiated against him. At the same time, it may be noted that the department did not initiate the process when the petitioner became eligible on 21.12.1994 itself and there was an administrative lapse in holding DPC, if it is so required as claimed by the respondent authorities for granting the second TBP. I have gone through the decision of the Apex court in **Premchandran's** case(supra) wherein it is held the respondents-employee should not suffer for administrative lapse in holding the DPC. The respondent authorities indisputably failed to consider the petitioner's case during 1994 and 30.03.2001 i.e. the period from the date on which the petitioner became eligible for second TBP and there was no departmental proceeding against him. He was over-due for second

TBP on 31.03.2001. It was incumbent upon the respondent authorities to consider his case and grant the second TBP with effect from 21.12.1994. The case of **Saroj Kr. Mishra**(supra) has rightly been referred to by the learned counsel for the petitioner inasmuch as it has been held that a departmental proceeding is ordinarily said to be initiated only when a charge sheet is issued and the case of promotion of a delinquent should be taken up or considered resorting to sealed cover procedure. Admittedly, in the present case, while the case of other similarly situated eligible officers were taken into consideration, while he was placed under suspension, such universally accepted principle was not followed. If the aforesaid principle was followed, the petitioner would have been granted second TBP along with others as per common order dated 21.03.2005. The action of the respondent authorities in denying consideration for second TBP to the petitioner during 1995 and 30.03.2001 has no sanction of law and such action cannot be treated as valid and justified. Moreover, it must be noted that the misconduct alleged against the petitioner was not taken as much serious as warranting imposition of major penalty like compulsory retirement and it was ultimately converted/reduced to a minor penalty like stoppage of 2(two) increments with cumulative effect and reinstatement in service with all consequential benefits as per the order dated 05.10.2005. The consequence of order dated 05.10.2005 entitles the petitioner second TBP with retrospective effect, at least, from 1995.

**20.** As to the point raised by the petitioner that for granting TBP, there is no necessity of holding DPC or recommendation of the

DPC, it is felt necessary to go into the purpose of adopting TBP scheme. It is universally accepted that where there are large number of employees in a department without any likelihood or chance of getting promotion in the near future, it becomes expedient to give TBP to remove frustration amongst the employees and give higher pay in terms of emoluments and such TBP does not affect the normal seniority of those higher up. It is observed in ***Dwijen Chandra Sarkar Vs. Union of India***, reported in **(1999) 2 SCC 119** that if the true purpose of time bound promotion is meant to relieve frustration on account of stagnation, it cannot be said that the government wanted to deprive others who were brought into the department in public interest, of the benefit of a higher grade. The prescription on account of stagnation is a common factor not only of those already in the department but also those who are administratively transferred by the govt. from one department to other department. The scheme in the present case does not provide that the TBP should be given only on the recommendation of the DPC or that the case for TBP must be considered by the DPC. If the TBP, as accepted by the parties, is to be given, as per the scheme, without linkage to vacancies, it can be said that the process for promotion by way of holding DPC has been dispensed with if by giving promotion under the TBP scheme without linkage to vacancies and without affecting the seniority of the staff just to give financial benefit to the eligible person(s), the respondents should have considered the petitioner's case when he became due for second TBP in 1995 i.e. before the departmental proceeding was initiated against him. The respondents, on principle accepted the

position of the petitioner about his eligibility for which he was given second TBP after he was awarded punishment of stoppage of 2(two) increments with cumulative effect and reinstatement in service. The department by way of not granting him second TBP along with 48 other persons, amongst whom, many are juniors to him, by order dated 21-03-2005 without any linkage to vacancies on seniority-cum-fitness basis from retrospective dates between 1994 and 1998 is not supported by any valid reason and justification. The aforesaid order dated 21.03.2005 does not indicate that the second TBP to Senior Medical Officer(SG) was given to those persons on the recommendations of the DPC. The respondent authorities have lost sight of the fact that the petitioner was brought from Central Health Service to the State Health Service and was absorbed permanently in the interest of public and accordingly, he has been serving under the State Government for such a long time without any intention to send him back to his parent department under the Government of India.

**21.** As the petitioner was reinstated in service after modification of the order of compulsory retirement to stoppage of 2(two) increments with cumulative effect, the period with effect from 28.08.1999 to 10.07.2001 should be treated to be period under suspension and he should be given the subsistence allowance as provided under the rules. The petitioner was awarded with compulsory retirement only from 11.07.2001 till the said punishment was modified to stoppage of 2(two) increments with cumulative effect i.e. on 14.10.2005. If it is an acceptable position that the petitioner's

punishment of compulsory retirement has been modified and reinstated in service, the period between 10.07.2001 to 14.10.2005 should also be treated as under suspension and he should be paid the subsistence allowance for the said period. In the order dated 05.10.2005 by which the order of compulsory retirement has been modified to stoppage of 2(two) increments with cumulative effect, it has been clearly provided that **“Shri Boje, therefore be reinstated in service with the above mentioned penalty and the department should give him all consequential benefits accordingly.”** The implication of the aforesaid order is that the period under suspension with effect from 28.08.1999 to 10.07.2001 and the period of compulsory retirement with effect from 11.07.2001 to 14.10.2005 have been treated as on duty and the said period stood regularised thereby entitling him all consequential benefits including the subsistence allowance as admissible under the law. The stoppage of 2(two) increments might have commenced after 05.10.2005 and the said punishment imposed have completed/ended in October 2007. As stated earlier, in case of TBP, there is no need for holding DPC inasmuch as there is no such rules, circular, govt. policy and guidelines to that effect. If it is so, the petitioner should have been given the second TBP in 05.10.2007 i.e. after expiry of punishment of stoppage of 2(two) increments and such promotion should have been given with retrospective effect from 21.12.1994 i.e. the date on which he became eligible after completing 5 years regular service in the grade or at least on 21.11.1998, the date, on which, his contemporaries got the promotion to Senior Medical Officer(SG) under the second TBP scheme.

**22.** In the light of the forgoing discussions and reasons, the Notification No. HFW-51/2005 dated 15.05.2009(Annexure P/8 to the writ petition) issued by the Commissioner(Health & Family Welfare), Govt. of Arunachal Pradesh, Itanagar, allowing second TBP to the petitioner in the scale of pay of Rs.12,000-375-16,500/- p.m.(pre-revised) with effect from 02.12.2006 is liable to be set aside and quashed. It is accordingly set aside and quashed. The petitioner should be given the benefit of higher pay with effect from 21.11.1998 as was provided in respect of other contemporaries vide order dated 21.03.2005 while allowing second TBP to the Senior Medical Officer(SG) in the scale of pay of Rs.12,000-375-16,500/- p.m..

**23.** The petition accordingly stands allowed to the extent indicated above. Parties to bear their own costs.

**JUDGE**

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