29

Central Administrative Tribunal
Principal Bench

O.A.No.624/2001

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 28th day of May, 2003

1. ESI (Medical) Delhi Employees Union
Through its President
William Son John
ESI Hospital
Basaidara Pur
New Delhi - 110 015.

2. B.K.Bhardwaj
General Secretary
ESI (Medical) Delhi Employees Union
ESI Hospital
Basaidarapur
New Delhi - 110 0015.

3. Sh. Rajinder Pal, LDC
s/o Sh. Jai Lal
Vill. & PO 1065, Nazafgarh
New Delhi.

4. Sh. Ramesh Kumar
Peon
s/o Sh. Ram Babu
r/o 340, Type-I
ESI Colony, Sector-56
NOIDA (UP). ... Applicants
(By Advocate: Sh. A.K.Behera)

Vs.

1. Employees State Insurance Corporation
through its Director General
Panchdeep Bhawan
New Delhi - 110 002.

2. Director (Medical) Delhi
ESI Scheme Hospital Complex
Basaidarpur,
New Delhi - 110 015.

3. Secretary
Ministry of Labour
Shram Shakti Bhawan
Rafi Marg
New Delhi.

4. Director General
Central Govt. Health Scheme
Nirman Bhawan
New Delhi. .. Respondents
(By Advocate: None; Shri J.P.Sharma, Departmental Representatitve)

O R D E R

By Shri Shanker Raju, M(J):

Applicant No.1 is a Union of Group 'C' and 'D' ministerial employees of ESI Hospitals and

30

Dispensaries along with others have assailed respondents' action in not granting Hospital Patient Care Allowances (hereinafter called as "HPCA") and Patient Care Allowances (hereinafter called as "PCA") to the employees as similarly granted to CGHS employees.

2. Respondents' order dated 4.2.2000, where the above allowances have not been found eligible to the applicants as it is admissible to non-ministerial Group 'C' and 'D' employees, is assailed in this OA. Applicants sought quashment of these orders with direction to respondents to grant them HPCA and PCA with all consequential benefits including the arrears with interest.

3. Applicants are Ministerial Group 'C' and 'D' employees of ESI Scheme and are governed by ESI Act, 1948. By an order dated 31.5.1993, HPCA/PCA was granted to all Central Government who are posted in hospitals or dispensaries w.e.f. 1.12.1987. As a result, employees working in CGHS, Safdarjung Hospital, RML Hospital, including UDCs, Clerks, Peons, Record Sorter, Stenographers, Head Clerks, Assistants, Office Superintendents, Junior and Senior Hindi Translators, PA/Sr.PA are getting the benefit of the aforesaid Circular dated 31.5.1993.

4. By a notification date 5.1.1990, Ministry of Health and Family Welfare, promulgated the Willington Hospital and Nursing Home, New Delhi

(31)

(Class-III posts) Recruitment (Amendment) Rules, 1990 inter alia designating the posts of Office Superintendent, Statistical Assistants Head Clerks, Stenographers, Cash Wards, UDC/LDC as non-ministerial. Applicants being aggrieved with non-accord of the allowances which is discriminatory as compared to the counter parts in CGHS and Municipal Corporation of Delhi, preferred a representation which was turned down by the impugned order, giving rise to the present OA.

5. Shri A.K.Behra, learned counsel for applicants referring to Section 17 of the ESI Act, 1948, contended that in so far as the pay and allowances of employees of statutory organisation are concerned, the same are to be accorded in accordance with rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay and a departure has been made by the ESI, the same is not sustainable, as prior approval of the Central Government has not been sought.

6. Shri A.K.Behra contended that the applicants have been arbitrarily, without any object sought to be achieve, being equal with their counter parts in CGHS, had been discriminated arbitrarily which cannot be countenanced in view of the Articles 14 and 16 of thee Constitution of India.

7. By referring to a decision of Apex Court in International Fertilisers Limited v. E.S.I.C., 1987(4) SCC 203, it is stated that in a Welfare

32

Legislation, rule of literal construction is to be applied and as the counter parts have been given, who are similarly circumstance with that of applicants, these allowances cannot bee denied to the applicants.

8. In the aforesaid conspectus, it is stated that the work and duties discharged by the applicants in capacity of LDC/UDC, Peons, Stenographers while posted in the Hospitals/Dispensaries is identical to that discharged by their counter parts in hospital and dispensaries under CGHS. As the ESI is paying HPCA/PCA to the non-ministerial Group 'C' & 'D' staff, applicants should also be accorded the same and for this period, they should be treated as non-ministerial staff as done in the case of CGHS. The aforesaid classification according to the applicants' counsel does not pass the mandate enshrined under Article 14 of the Constitution of India.

9. On the other hand, Departmental Representative, who is present in the court, appearing on behalf of respondents seeks an adjournment. I decline to adjourn the case as sufficient time has already been accorded to the respondents and despite specific directions of this Court on 22.04.2003, respondents have not engaged the counsel and have failed to make suitable alternative arrangements to get the case argued. In this view of the matter, he has adverted to the stand taken by the respondents in their reply.

33

10. Respondents in their reply contended that recruitment, regulations framed for the post held by the applicants designation of these posts as ministerial posts have been described ass non-ministerial and were accorded the benefits of HPCA and PCA, in absence of any amendment on the similar line, benefits cannot be extended to applicants.

11. It is also contended that vires of the statutory recruitment rules and regulations has not been assailed.

12. It is stated that HPCA admissible to only non-ministerial staff in Group 'C' and 'D' whereas Group 'C' ministerial staff and nursing personnel have been excluded as per the orders issued on 24.12.1998. As per the Government of India's instructions dated 26.9.1999, HPCA and PCA is admissible only to Group 'D' and 'C' (non-ministerial) staff posted at ESI Hospitals and dispensaries.

13. Ministry of Health vide its orders dated 14.9.1999 after consultation with Ministry of Health, clearly stated that the aforesaid allowance may be granted to non-ministerial staff working in the organisation and that PCA may not be granted to ministerial employees as they are not involved in a patient care. It is stated that Govt. of India has not agreed to reclassify clerical posts as non-ministerial just to make them eligible for PCA as they do not perform the duties relating to patient care.

(34)

14. I have carefully considered the rival contentions of the parties and perused the material on record.

15. In view of the Central Government circular dated 31.5.1993, Group 'C' and 'D' employees includes LDC/UDC and other ministerial staff had been getting the benefit of HPCA and PCA, and for that purpose the staff which has been classified as ministerial has been reclassified as non-ministerial. The aforesaid benefit apart from being accorded to Central Government employees in Group 'C' and 'D' is also extended to the Government of NCT and MCD.

16. Ministry of Health has made eligible ministerial staff for grant of HPCA/PCA.

17. Section 17 (2)(a) of the E.S.I. Act, 1948 is reported as under:

> "The method of Recruitment, salary and allowances, discipline and other conditions of service of the members of the staff of the Corporation shall be such as may be specified in the Regulations made by in accordance with the Rules and orders applicable to the officers and employees of the Central Govt. drawing corresponding scales of pay;
>
> Provided that where the Corporation is of the opinion that it is necessary to make a departure for the said Rules or Orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government.
>
> In determining the corresponding scales of the staff under Clause (a), the Corporation shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Govt. and in case of any doubt,

33

> Corporation shall refer the matter to the Central Govt. whose decision thereon shall be final." (Emphasis Supplied)

18. If one has regard to the aforesaid, in so far as the allowances to the employees in ESI are concerned, the same would be at par with the allowances admissible to the Central Government employees drawing corresponding scales of pay. However, in case of departure, it is incumbent upon the respondents to obtain prior approval of the Central Government.

19. From the perusal of the communication dated 14.9.1999, though it has been acknowledged that non-ministerial staff of CGHS in Group 'C' and "D' has been granted PCA and these rules are applicable to ESIC also non-ministerial employees have been accorded the benefit, and it has been observed that at present ministerial employees who are not involved in patient care, shall not be granted the benefit. The aforesaid allowances was revised vide orders dated 24.12.1998 and 3.5.1999.

20. As the provision of PCA contained in Government orders issued on 31.5.1993, is a Welfare legislation, the interpretation of Rule 17 of the ESI Act, 1948 it to be done in the same manner. As the benevolent construction would apply and there are no exception to it. The Apex Court in Shyam Sunder v. Ram Kumar, 2001(8) SCC 24, held as follows:

> "Generally rules of interpretation are meant to assist the court in advancing the ends of justice. It is, therefore, true in the case of application of rule of benevolent construction also. If on application off the rule of benevolent

(36)

construction, the court finds that it would be doing justice within the parameters of law there appears to be no reason why such the present case. But there are limitations on the powers of the court, in the sense that courts in certain situations often refrain themselves from applying the rule of benevolent or liberal construction. The judicial precedents have laid down that, ordinarily, where and when the rule of benevolent construction is required to be applied and not to be applied. One of the situations is, when the court finds that by application of the rule of benevolent construction it would be legislating a provision of statute either by substituting, adding or altering the words used in the provision of the Act. The second situation is when the words used in a statute are capable of only one meaning. In such a situation, the courts have been hesitant to apply the rule of benevolent construction. But if it is found that the words used in the statute give rise to more than one meaning, in such circumstances, the courts are not precluded from applying such rule of construction. The third situation is when there is no ambiguity in provision of a statute so construed. If the provision of a statue is plan, unambiguous and does not give rise to any doubt, in such circumstances the rule of benevolent construction has no application. However, if it is found that there is a doubt in regard to the meaning off a provision or word used in the provisions of an enactment, it is permissible for the court to apply the rule of benevolent construction to advance the object of the Act. Ordinarily, the rule of benevolent construction has been applied while construing welfare legislations or provisions relating to the relationship between weaker and stronger contracting parties. Assuming that the amending Act is for the general good of the people, in the present context situation which may call for application of such rule while construing substituted Section 15 are not present. (Para 35).

A reading of substituted Section 15 of the Punjab Pre-emption Act would show that the words used therein are plan and simple and there is no ambiguity in them. The words used in the Section do not give rise to more than one meaning. It is also not possible to find that the amending Act either expressly or by necessary implication is retrospective, if it is held that the amending Act t is retrospective in operation, would be relegislating the enactment by adding

39

words which are not to be found in the amending Act either expressly or by necessary intendment and it would amount to doing violence to the spirit of the amending Act. For these reasons, the application of the rule of benevolent construction is wholly inapplicable while construing substituted Section 15. (Para 35)."

21. If one has regard to the aforesaid though it is not disputed that the applicants are performing and discharging the similar duties and are at par with in all respects including functional requirement as ministerial staff, with that of their counter parts in Central Government hospitals and dispensaries as well as Government of NCT, being identically situated, on the ground that recruitment rules designated them as ministerial staff, and there is no reclassification as non-ministerial, cannot be a valid and justifiable ground to deprive the applicants from HPCA and PCA as this would be an antithesis to the enshrined principle of equality under Articles 14 and 16 of the Constitution of India.

22. The Discrimination, which has an object sought to be achieved, can be sustained but an arbitrary action, which lacks fairness and reasonableness, cannot be sustained. Counter parts of the applicants in CGHS have been reclassified by an amendment as non-ministerial staff for the purpose of accord of PCA and HPCA, the same treatment has not been meted out to the applicants. Rather respondents deprived the applicants of the same despite Section 17 of the ESI Act, 1948 for the purpose of allowances treating an employee of ESI at par with Central Government employees. If PCA and HPCA is admissible to non-ministerial staff of Hospital like Central

38

Government as well as Government of NCT, the same cannot be denied to the applicants, who in all respects are equal to their counter parts.

23. The test of permissible classification has been laid down by the apex court in K. Thimmappa v. Chairman, Central Board of Directors, SBI, 2001 (2) SCC 259 which is reproduced as under:-

> "What Article 14 prohibits is class legislation and not reasonable classification for the purpose of legislation. If the rule-making authority takes care to reasonably classify persons for a particular purpose and it if deals equally with all persons belonging to a well-defined class then it would not be open to the charge of discrimination. But to pass the test of permissible classification two conditions must be fulfilled:
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> (a) that the classification must be founded on an intelligible differentia which distinguishes persons or things which are grouped together from others left out of the group; and
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> (b) that the differentia must have a rational relation to the object sought to be achieved by the statute in question.
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> The classification may be founded on different basis and what is necessary is that there must be a nexus between the basis of classification and the object under consideration. Article 14 of the Constitution does not insist that the classification should be scientifically perfect and a court would not interfere unless the alleged classification results in apparent inequality. When a law is challenged to be discriminatory essentially on the ground that it denies equal treatment of protection, the question for determination by court is not whether it has resulted in inequality but whether there is some difference which bears a just and reasonable relation to the object of legislation. Mere differentiation does not per se amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary; that it does

39

> not rest on any rational basis, having regard to the object which the legislature has in view. If a law deals with members of a well-defined class then that is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. It is for the rule-making authority to determine what categories of persons would embrace within the scope of the rule and merely because some categories which would stand on the same footing as those which are covered by the rule are left out, would not render the rule or the law enacted in any manner discriminatory and violative of Article 14. It is not possible to exhaust the circumstances or criteria which may afford a reasonable basis for classification in all cases. It depends on the object of the legislation, and what it really seeks to achieve. (Para 3)".

24. From the perusal of the aforesaid, I am of the considered view that the differentiation made by the respondents is not reasonable rather is arbitrary and irrational.

25. In the result, for the foregoing reasons, OA is partly allowed. Impugned order dated 4.2.2000 does not stand scrutiny of law and is accordingly set-aside. Respondents are directed to reconsider the claim of the applicants for grant of HPCA and PCA in terms of Section 17 of the ESI Act, 1948 as well as in the light of the similar benefits accorded to the counter parties in Central Government, within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member(J)