

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 2267/1998

New Delhi, this the 4th day of June, 2004

(36)

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

Dr. A.K. Bhatnagar,
S/o Sh. G.K. Bhatnagar,
R/o G-16, Hauz Khas Enclave,
New Delhi - 110 016

(By Advocate : Shri B.K. Aggarwal) ... Applicant

Versus

Union of India, Through
The Director General,
Health Services,
Nirman Bhawan, New Delhi

... Respondents

(By Advocate : Shri V.S.R. Krishna)

O R D E R

Heard.

2. The applicant has filed this OA with prayers that the respondents be directed to produce records of the Parliament House Annexe Medical Centre where Medical/ non-Medical Specialists are recording their domiciliary visits and also to produce records of the conveyance allowance claims made by Shri K.L. Goswami, Refractionist of Safdarjung Hospital/CGHS Medical Centre, Parliament House Annexe, New Delhi and that the respondents be directed to grant the conveyance allowance @ Rs.550/- per month to him from July, 1989 when the first request for this purpose had been made by him, and @ Rs.1650/- per month from 1.8.1997 after the 5th Pay Commission's recommendations.

3. This OA had earlier been decided by the Tribunal vide



its order dated the 28th June, 1999 with the following observations:

"In view of the aforementioned reasons, I find no scope for giving any direction to the respondents in respect of the relief prayed for by the applicant. The OA is accordingly dismissed. No costs."

4. The applicant filed an appeal against the said decision of the Tribunal in the High Court of Delhi vide CW No. 5341/2000, which was disposed of on 3.9.2003 with the following observations/directions:

"..... we are of the view that the Tribunal erred in not deciding whether the Petitioner is actually entitled to the grant of conveyance allowance. The case of the Petitioner was not that he is entitled to the benefit of the principle of 'equal pay for equal work'; his case was that he falls in a special category because of the place of his posting and nature of work and that no other physiotherapist is required to make domiciliary visits, while the Petitioner is so required. It is in this background that the Petitioner claimed parity with other Group A Specialists and the benefit of decisions of the Government of India contained in their letters dated 10th November, 1987 and 2nd March, 1990. The Tribunal did not examine the issue in this perspective and rejected the contention of the Petitioner only on the ground that a factual dispute has been raised and that the Tribunal cannot adjudicate on the factual controversy. This is what the Tribunal says in paragraph 6 of its order:

"In the present case, one of the reasons given by the respondents is that the Physiotherapist in another hospitals are not being given conveyance allowance. In other words in their view the Physiotherapist 'A' category do not have the same responsibilities for domiciliary visits as Specialists/GDMOs in DGHS/CGHS. The applicant himself does not claim that all Physiotherapists have the same responsibilities as medical specialist and GDMOs. As claimed by him the difference in the responsibilities of the applicant himself is due to the place of his posting.

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The respondents however do not agree that these responsibilities are akin to and are the same as of specialists/GDMOs posted at the same place. There is thus a dispute over facts. This is a controversy which the Tribunal cannot enter into in judicial review."

9. It is now settled that the Tribunal has to act like a court of first instance in regard to service matters (see L. Chandra Kumar vs. Union of India, (1997) 3 SCC 261). It follows, therefore, that the Tribunal is required to decide issues of both fact and law. In the present case, the Tribunal clearly failed to decide a factual controversy. Consequently, we have no option but to set aside the order of the Tribunal to this limited extent and remit it for a decision on the question whether or not the Petitioner had made out a case for grant of conveyance allowance, both on facts and in law."

5. On closer examination of the facts as submitted by the applicant, it is observed that he has not drawn a parallel with the duties of Physiotherapist Grade-I (Gazetted) in other hospitals. While serving at Parliament House Annexe, New Delhi, he has been attending to VVIP/VIPs/Ministers/MPs including the PM, the President and the Vice President of India as well as former Prime Ministers, former Presidents of India etc. not only at the said Medical Centre but has also performed domiciliary visits in respect of the said beneficiaries on Sundays/holidays and on working days even after duty hours. As submitted by him, he is called on short notice to attend to the patients of the above category, at times carrying gadgets and other costly equipment for giving therapeutic treatments to them at their residences. He is neither provided staff car at short notice nor are taxis or auto rickshaws available at odd hours. He is, therefore, compelled to use his personal car for the said visits. He further submits that record of such visits is not maintained by the doctors at the Medical Centre, Parliament House Annexe and that such visits of the Specialists as well as of the

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applicant are certified by the Physician Incharge of the Medical Centre. While conveyance allowance @ Rs.550/- per month and now @ Rs.1650/- per month from 1.8.1997 (after 5th Central Pay Commission) is paid to the Specialists on the basis of such Certificates for maintaining a car in accordance with the Health Ministry's order dated 10.11.1987 (Annexure A-2), the same is being denied to the applicant arbitrarily.

7. A reference has been made to the position in regard to doctors of all the systems of medicines, namely, Allopathic, Homeopathic, Sidha, Unani or Ayurvedic working under the Ministry of Health and Family Welfare/CHGS who are being allowed fixed conveyance allowance on monthly basis at the above rates vide orders of the said Ministry dated 10.11.1987 provided they maintain their own cars. The applicant claims that even Bio-Chemists working under the Ministry of Health and Family Welfare/CGHS are getting the said allowance. This allowance is also payable to non-Medical Specialists at the said rates with effect from 1.8.1997 vide the orders of the Ministry of Health and Family Welfare dated 2.3.1990. The premise which the applicant has advanced for seeking the said allowance is that the nature of his job and place of posting involve domiciliary visits to the patients and, accordingly, he should be given the said allowance.

8. The applicant had approached this Tribunal earlier vide OA No.411/1997 in which a prayer had been made that he be paid conveyance allowance @ Rs.550/- per month or equivalent from July, 1989 when the first request had been made. While disposing of the said OA, it had been noted by the Tribunal that the applicant's work undoubtedly involved domiciliary

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visits. The Tribunal had observed further as under:

"I have heard the counsel for the applicant and have also perused the orders dated 12.3.1990 which pertain to non-medical categories. As per these orders, conveyance allowance is allowed to non-medical (Group-A) Specialists/Scientists working under DGHS/ Ministry of Health & Family Welfare. In substance, they are the same orders as issued by the Ministry of Health & Family Welfare dated 10.11.1987. The learned counsel submits that under the orders dated 14.3.1995 of Additional Director (CGHS). The learned counsel has pointed out that the applicant has to maintain a car and therefore, as lot of visits to VVIPs are involved, he has to incur certain expenditure. In view of that, the respondents should also extend the same facility to the applicant as in the case of other non-medical specialists.

I have considered the matter carefully. It would appear that the applicant has a *prima-facie* case for grant of this facility. As explained by the learned counsel, the applicant has to attend to the dignitaries round the clock as and when called and he has to carry gadgets and other costly electronic equipment for the treatment at the residence of VIPs. Often such patients and VIPs are unable to go to the hospital and in such situations, he has to go to their houses to administer treatment. Therefore, his work undoubtedly involves domiciliary visits.

In the facts and circumstances of the case, I consider it appropriate that in the first instance, the respondents should examine the matter and dispose of the same. To this end, the applicant may make a representation giving particulars of the visits made by him over a period of say, three months from the date of receipt of the representation. In case the applicant is still not satisfied, he will be at liberty to approach the Tribunal again in accordance with law."

On perusal of the said observations of the Tribunal, there is no doubt that the applicant's duties involved domiciliary visits like any other Specialists and that he did make domiciliary visits in order to attend to patients during Sundays/holidays/ after duty hours on working days.

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9. While the applicant submitted his case to the respondents vide his representation dated 8.12.1997 (Annexure A-5) in compliance with the directions of the Tribunal in the above mentioned OA, and which was duly forwarded by the Medical Officer Incharge of the Medical Centre, Parliament House Annex, New Delhi, justifying his visits, the same was turned down by the respondents vide order dated 24.6.1998 (Annexure A-1) for the following reasons:-

- "(a) That O.M. No.A.11019/3/90-PH (Conv.A) dated 2.3.90 is applicable only to Group 'A' Specialists and since Dr. A.K. Bhatnagar is a Group 'B' officer, this O.M. is not applicable to him.
- (b) That other similarly placed Physiotherapists working in Government hospitals are not being given conveyance allowance.
- (c) That the details of visits made by him during the months of August, September and October, 1997 have not been supported by the official records maintained in the Parliament House Annex, Medical Centre."

10. The applicant, however, submitted another representation to the respondents on 15.5.1998 giving para-wise replies to the rejection orders of the respondents dated 28.4.1998. The arguments which the applicant had advanced earlier in support of his demand appear to have been reiterated by him in his said representation. Most significant thing the applicant has mentioned in his representation is the fact that the respondents in the case of K.M.L. Goswami, Refractionist at the Parliament House Annex Medical Centre had been allowed conveyance allowance even though he was not a Doctor nor a non-Medical Specialist. In the opinion of the applicant, his case is better placed than that of Goswami, who has since retired. He accordingly, urged the respondents to re-consider his case in view of the

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letter and spirit behind the directions of the Tribunal as given in OA No. 411/1997. The applicant, however, was not favoured with any positive outcome of his representation which the respondents refused to reconsider, mainly on the ground that Shri Goswami had not been granted conveyance allowance and that he had only been paid actual charges for local journeys as and when required. The order of the respondents, in the opinion of the applicant, was non-speaking and carried no justification. He also demanded that the records in the case of K.L.M. Goswami should have been produced by the respondents.

11. The respondents appear to have examined the case with reference to the fact that similarly placed Physiotherapists working in other Government Hospitals were not in receipt of the conveyance allowance and further that he is not covered under the provisions of the relevant orders of the Ministry of Health and Family Welfare as contained in their letter Nos. 27023/2/(B)/87-CHS.V dated 10.11.1987 and No. A.11019/3/90-PH (Conv.A) dated 2.3.1990. According to them, Physiotherapist Grade-I is neither a Specialist/General Duty Medical Officer (Gr.A) nor a non-Medical Group 'A' Scientist. They are quite conscious of the fact that they did seriously examine the case of the applicant in compliance with the directions of the Tribunal in OA No. 411/1997 and issued an order (Annexure V) accordingly. They seem to have taken the same position as mentioned above while giving a reply to the representation of the applicant. A significant fact which the respondents have submitted in reply to para-5 (I) of the OA is that the post of Physiotherapist cannot be compared with Group 'A' Medical Officers/Medical

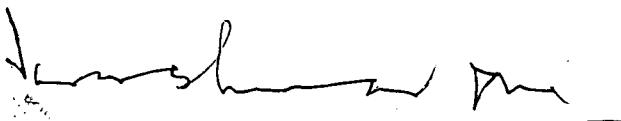
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Specialists/Non-Medical Scientists who are getting conveyance allowance in terms of the provisions as contained in OM No. A-27023/2(B)/87-CHS.V dated 10.11.1987 (Annexure A-7) and that Physiotherapist Grade-I is only a Grade 'B' officer and is less responsible than a Group 'A' Officer and accordingly the applicant is not entitled to conveyance allowance.

12. The applicant has disputed some of the things which have been submitted by the respondents in their counter reply and has made a particular mention of the fact that he paid 27 domiciliary visits in August, 1997 and 20 visits each in the months of September and October, 1997. On the question of the observation of the respondents that the details of the visits in the case of the applicants were not supported by the official records maintained in the Parliament House Annexe Medical Centre, the applicant has reiterated that no records of domiciliary visits are maintained at Parliament House Annexe Medical Centre and that such visits are only verified by the Physician Incharge. On the question of Shri Goswami getting conveyance allowance or reimbursement of actual expenses incurred on local journeys, the applicant has submitted that the said Goswami received similar amount month after month and year after year, and in his opinion, it is possible only when conveyance allowance and not reimbursement is given. He has, no doubt, asked for the relevant record being produced by the respondents.

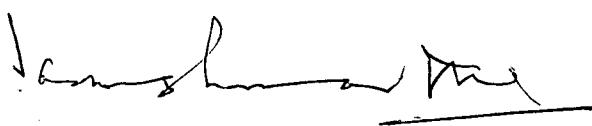
13. Most of the facts as submitted by the applicant as well as the respondents have been gone into by the Tribunal while disposing of the earlier OA, though the orders of the Tribunal did not envisage any direction to the respondents.





These have also been gone into by the Hon'ble High Court of Delhi while disposing of the CWP No.5341 of 2000. While the Tribunal did not find any scope for giving any direction to the respondents in respect of the relief prayed for by the applicant in terms of its observation as given in the said order, it is observed that the Physiotherapists in other Hospitals are not being given conveyance allowance and further that the Physiotherapists do not have the same responsibilities as the Medical Specialists and GDMOs and still further that a matter of policy having financial implications should not be dealt with by the Courts so as to compel the Government to change the same are, among other observations, as contained in the said order, the Hon'ble High Court in the said CWP has extensively referred to the facts of the case and accordingly directed the Tribunal to decide the factual controversy involved in the case. The Hon'ble High Court, while setting aside the order of the Tribunal, remitted it for a decision on the question whether or not the petitioner had made out a case for grant of conveyance allowance both on facts and in law.

14. Reverting to the facts of the case, it is observed that the applicant, who is posted as a Physiotherapist Grade-I in the Medical Centre of Parliament House Annexe and which Centre looks after the health/medical requirements of the Members of Parliament, Ministers, Prime Minister as also the Vice-President and the President of India, as submitted by the applicant and as also can be inferred from the fact that the said Centre is located in the Parliament House Annexe itself, has been making domiciliary visits like the other Specialists and non-Medical Specialists as also the



other eligible categories of Doctors making domiciliary visits; the same are simply certified by the Physician Incharge of the Centre. While it would certainly not be in order for the Tribunal to compel the respondents to reflect on their policy or to change the same in regard to conveyance allowance being made available to a certain category of medical/health functionaries, as is not included already in their letters at Annexures 1 and 2 to their counter reply, as has already been held by the Hon'ble Apex Court, it will be necessary for the respondents to go into the case of the applicant as an individual case, keeping in view the fact that his case does not have to be seen with reference to the cases of similarly placed functionaries in other Govt. Hospitals, as the said Hospitals are not generally required to attend to the medical/health needs of Members of Parliament, Ministers, Prime Minister, Vice President and the President of India as is the case in the case of functionaries of the Medical Centre located in the Parliament House Annexe. The case of the applicant has to be seen not as a category, but as a functionary of the Medical Centre at the Parliament House Annexe. If a reference is made to the case of Goswami, Refractionist, who has since retired, to find out whether he had been paid conveyance allowance or had been reimbursed the actual expenses on domiciliary visits, it should not escape our mind that the said functionary also had to make domiciliary visits and, accordingly, he had to be compensated by way of either conveyance allowance or reimbursement of actual expenses, whatever be the case, which is still disputed by the applicant and in which case he has prayed for production of record.

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GDMOs posted at the Central Government Hospitals and those posted at the Centre. He has accordingly claimed that he should also be paid conveyance allowance like what is being paid to the Specialists/non-Medical Specialists and GDMOs vide instructions of the Ministry of Health & Family Welfare as circulated vide letter dated 10.11.1987 (A-2) and those contained in their letter dated 2.3.1990 (A-3). The difficulty of the respondents is that they are guiding themselves strictly by the instructions as contained in the said letters which do not provide for Physiotherapists of any category being eligible for conveyance allowance. The question of similarly placed functionaries not getting the said allowance in other Hospitals or the demand of the applicant if conceded leading to similar demands being raised by similarly placed functionaries in other Hospitals and also further that the Physiotherapist Grade-I does not belong to any of the categories as mentioned in the said letters, would not really lead to resolution of the controversy as raised in this OA in regard to the relief sought by the applicant. The essential fact of the matter is that the applicant does pay domiciliary visits to the different categories of beneficiaries as submitted by him and as has been verified by the Physician Incharge in the Medical Centre at Parliament House Annexe. This aspect of the matter has not been disputed by the respondents except saying that the details of the visits made by the applicant during the months of August, September and October, 1997 have not been supported by the official records maintained in the Medical Centre of Parliament House Annexe. They have not commented on the submissions made by the applicant that the details of the visits are not maintained in the said Centre in the case of



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15. This discussion is certainly not intended to cause reconsideration of the instructions as are contained in the letters of the Ministry dated 10.11.1987 and 2.3.1990 (Annexure R-1 and R-2). The fact of the matter that a functionary who has made domiciliary visits and who has, in the process, made use of his personal car and who has not been compensated for the same by way of being allowed conveyance allowance like what has been allowed to other categories of medical/health functionaries as per the said letters of the Ministry cannot be ignored without causing discrimination against him. Equity and fair play and also principles of natural justice would demand that a special dispensation should be thought of in the case of the applicant so as to compensate him for the maintenance and use of his personal car for undertaking domiciliary visits as a part of his official duty. The respondents would do well to see the case Shri Goswami who was a Refractionist and who is reported to have been compensated for his domiciliary visits, either by way of conveyance allowance or reimbursement of actual expenses, as the case may be, and see whether what the applicant has submitted in that regard can be brought to bear upon the case of the applicant. As regards the date from which the case of the applicant has to be considered, the same has already been settled vide the orders of the Hon'ble High Court as contained in paragraph 7 thereof, which reads as under:

"7. We are not inclined to delve into this contention of learned counsel for the Petitioner because the Tribunal has proceeded on the assumption that the Petitioner was a Group A Specialist with effect from 20th April, 1998. Indeed, learned counsel for the Respondents does not now dispute the fact that the Petitioner is a Group A Specialist with effect from 20th April, 1998. Also, learned counsel for the

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Petitioner, during the course of his submissions before us, limited his claim for conveyance allowance for the period subsequent to 20th April 1998. In view of these developments that have taken place during the hearing of the case by us, it is not necessary to examine the correctness of reason (a) and (c) given by the Respondents for rejecting the relief claimed by the Petitioner. These reasons have effectively been given up by learned counsel for the Respondents for the period post 20th April, 1998. The claim of the Petitioner has, therefore, to be considered on the basis that he is a Group A Specialist with effect from 20th April, 1998 and that he is entitled to relief, if any, from that date only.

16. Having regard to the facts and circumstances of the case and keeping in view the observations of this Tribunal in the previous OA as filed by the applicant earlier and since disposed of by the Tribunal and also those of the Hon'ble High Court of Delhi as referred to hereinabove, this OA is partly allowed in terms of the above observations and with a direction to the respondents that they reconsider the matter in the above light and dispose it of by issuing a reasoned and speaking order within three months from the date of receipt of a copy of this order. No costs.


(SARVESHWAR JHA)
Member (A)

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