

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 487/2004

New Delhi, this the ^{23rd} day of December, 2004

Hon'ble Sh. Sarweshwar Jha, Member (A)

1. Smt. Sunita Sharma, W/o Dr. J.K.Sharma
R/o 502/5, Sant Nagar, Karol Bagh, New Delhi.
2. Smt. Manjubala Maheshwari, W/o Sh. N.K.Maheshwari
R/o C-376, Saraswati Vihar, Delhi.
3. Sh. Guntur Subramanyam, S/o Sh. G.G.Naidu
R/o E28A, Nanakpura, South Moti Bagh-II
New Delhi.
4. Sh. Madhu Sudan, S/o Sh. Jagannath Singh
R/o 19GA2, LIG Flats, Mayur Vihar-III, Delhi-96.
5. Smt. Neerja Mango, W/o Sh. Manoj Mango
R/o 129-B, Pocket IV, Mayur Vihar Phase-I, Delhi 91.
6. Smt. Jyoti Mittal, W/o Mr. R.K.Mittal
R/o B-258, Surajmal Vihar, Delhi - 92.
7. Smt. Jyoti Aggarwal, D/o R.A.Gupta
R/o 55-B, Pocket-III, Mayur Vihar-I, Delhi.
8. Smt. Prem Kumar, W/o Sh. Ravinder Kumar
R/o 51, Triveni Apptt., Near Block H-3, Vikas Puri
New Delhi - 110 018.
9. Shalini Mahajan, W/o Sh. D.K.Mahajan
R/o F-23/B, Vijay Nagar, Delhi- 110 009.
10. Sh. A.N.Singh, S/o late Sh. Alakh Narayan Singh
R/o D-442, Pratap Vihar, Ghaziabad, UP.

...Applicants

(By Advocate Sh. U.Srivastava)

V E R S U S

Union of India through

1. The Secretary
Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi.

S. Me

2. The Director General of Health Services
Nirman Bhawan, New Delhi.
3. The Principal & Medical Superintendent
Lady Harding Medical College & Kalawati
Sharan Children's Hospital, New Delhi.
4. The Admn. Officer
Kalawati Sharan Children's Hospital
New Delhi.

...Respondents

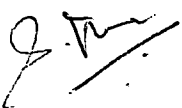
(By Advocate Sh. Surender Kumar)

ORDER

The applicants have impugned the orders of the respondents dated 8-1-2004 whereby they have rejected their representations submitted on 20-12-2003 on the subject regarding grant of Hospital Patient Care Allowance (HPCA) to the employees in the scale of pay of Rs.5500-9000/- and also stopping recovery of the said allowance already paid to them.

2. The applicants who have been serving against different posts in the respondents' organization have been granted the scale of pay of Rs.5500-9000/- after the recommendations of the Fifth Central Pay Commission were accepted. The HPCA which has been sanctioned vide order of the respondents dated 25-1-1988 to group 'C' & 'D' non-ministerial hospital employees, was being allowed to the applicants @ Rs.80/- and Rs.78/- per month, as the case may be, w.e.f. 1-12-1987 subject to the condition that no night weightage allowance if sanctioned by the Central Govt. would be admissible to them if working in Central Govt. hospitals and hospitals under the Delhi Admn. The said rates of HPCA have since been revised as explained in paragraph 4.6 as well as 4.7 of the OA. However, with the employees' scale of Rs.5500-9000/- having been declared as group 'B', the order regarding recovering the payment made to them on account of HPCA has been issued and hence this OA.

3. The applicants have argued that while they represented against the proposed move of the respondents on 17-9-2002 and while they issued a reply vide an OM dated 25-9-2002 (Annexure A-9) declaring that the applicants were holding posts in the scale of pay of



Rs.5500-9000/- on regular basis, which were group 'B' posts, they are not entitled to the said allowance as per the existing instructions, according to which, this allowance is admissible only to employees of group 'C' & 'D'. The applicants, however, continued to receive the said allowance even after 25-9-2002. The respondents issued another OM on 3/5-6-2003 in which directions were given to stop payment of the said allowance in the case of the officials mentioned in the said OM. The applicants have argued that they are equally exposed to highly infectious environment loaded with virulent and multi-drug resistant bacteria, and to take care of their preventive and nutritional needs. The said allowance was, therefore, never restricted to any pay scale. They have submitted another representation to the respondents dated 22-12-2003 (Annexure A-12), but there has been no response in the matter; instead, recoveries are being made from the applicants. The impugned order dated 8-1-2004 has, however, been issued by the respondents in reply to the said representation, rejecting the same and conveying that recoveries of the payments made in this regard shall be made w.e.f. April, 1998.

4. It has been alleged by the applicants that the action of the respondents is irregular for the reasons that the payment of the said allowance was never confined to any scale of pay; that they were paid this allowance after completing the requisite formalities in accordance with the relevant rules and instructions on the subject; that they were never declared as group 'B' employees ; that the recoveries @ Rs.1400/- per month has been ordered in their cases without any show cause notice to them and as such the same is illegal and arbitrary ; and further that reduction in their pay without being given an opportunity of being heard is in violation of the law laid down by the Hon'ble Supreme Court in the case of **Bhagwan Shukla v. UOI & Ors.** (JT 1994 (5) SC 253); that there has been no change in the duties and responsibilities of the applicants and also in the risks to which they are exposed; that the impugned order had been issued by the respondents due to wrong interpretation of the recommendations of the 5th CPC by which the classification of the civil posts of the Central Govt. has been revised by the DoPT vide their Notification dated 20-4-98; further that the HPCA to group 'C' & 'D' employees

was admissible to the employees working in the Central Govt. hospitals and hospitals under the Delhi Admn. subject to the condition that no night weightage allowance, if sanctioned by the Central Govt., would be admissible to them; and finally that it is a settled law vide the decision of the Hon'ble Supreme Court in the case of **State of Rajasthan v. Fateh Chand Soni** 1996 SCC (L&S) 340 relied upon in the case of **Lallu & Ors. v. UOI & Ors.** OA 1610/97 decided on 28-7-98 that promotion means either a favourable change over to a higher scale of pay or to a higher post and that the provision of a selection grade, i.e., change to a higher grade in the same category is not a new thing.

5. I have been taken through the reply of the respondents in which I find that they have reiterated the facts relating to the employees/applicants working in the scale of pay of Rs.5500-9000/- and the same having been declared as group 'B' post vide Ministry of Health letter dated 15-1-2001 (Annexure R-1) and further that the HPCA is not available to the employees working in the said scale of pay. It has, however, been confirmed by the respondents that necessary directions in compliance with the order of the Hon'ble Tribunal in the present case as given on 3-3-2004 have been issued by Kalawati Sharan Childrens Hospital on 15-3-2004 to the Accounts Officer of the said hospital to stop deduction of outstanding HPCA in respect of the applicants with immediate effect and until further orders. It has been issued with the approval of the respondent No.1&2.

6. The applicants, however, in their rejoinder, apart from reiterating whatever they had submitted earlier, have alleged that the said allowance is still being paid to the similarly situated persons in other hospitals including Lady Harding Medical College which are under the same respondents; in fact, this allowance is being paid even to similarly placed employees in Kalawati Sharan Children Hospitals also.

7. Ld. counsel for the applicants has referred to the decision of this Tribunal in OA 1610/97 as given on 28-7-98 in support of their contentions. However, on perusal of the orders of the Tribunal in the said case, it is observed that the said case is not relevant to the present case. Reference by the applicants to the decisions of the

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Hon'ble Supreme Court in **Bhagwan Shukla v. UOI & Ors.** (Civil Appeal No.5447/94 dated 5-8-94) in which it has been held that 'reduction in pay of an employee without his being given an opportunity of being heard is violation of principle of natural justice and the orders of Central Administrative Tribunal is set aside' is relevant to the case of the applicants to the extent that HPCA has been stopped being paid to them without their being given an opportunity of being heard and also that directions have been given to deduct the amounts which have already been paid to them in this regard, though it has been temporarily stopped in compliance with the orders of this Tribunal as given on 3-3-2004.

8. Referring to the decisions of the Hon'ble Supreme Court in **Shyam Babu Verma & Ors. v. UOI & Ors.** passed on 8-2-94, reported in 1994 (2) SCC 521, in which it has been held, among other things, that 'since petitioners received the higher scale due to no fault of theirs, it will be just and proper not to recover any excess amount already paid to them', the learned counsel for the applicants has prayed for the same relief.

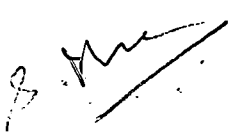
9. On perusal of the rival contentions of the parties, it is thus observed that the entire case is centered on the fact that HPCA was paid to the applicants from the date the said allowance was sanctioned in respect of group 'C' and 'D' employees (non-ministerial) working in the hospitals of the Central Govt. and also under Delhi Admn. By virtue of their being group 'C' employees and that the same has been stopped being paid to them now that they have been declared as group 'B' as a result of their having been granted the scale of pay of Rs.5500-9000/- after the recommendations of the 5th Central Pay Commission have been implemented. The arguments advanced by the applicants that there has been no order declaring them as group 'B' employees, or that this allowance was not restricted to any pay scale, that they were duly engaged by the respondents as group 'C' employees, and that there has been no change in their duties and responsibilities, are really not relevant, as their having been declared as group 'B' employees is based on the classification done in this regard by the DoPT on the basis of the revised scales of pay as recommended by the 5th CPC and that the said allowance has been

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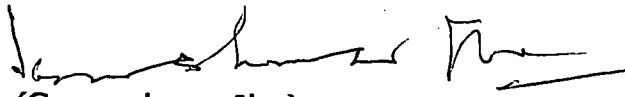
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made payable right from the inception to only group 'C' & 'D' employees and the same did not require any scale of pay being indicated and further that the scales of pay do get revised without any change in the duties and responsibilities of the posts concerned. The applicants have, however, persisted with the arguments in regard to their having not been given an opportunity of being heard before the orders regarding deduction of the amounts already paid to them were issued. They have themselves admitted that they were initially appointed as group 'C' employees and, therefore, they had been rightly given HPCA when they were such employees. The respondents will, however, need to look into the fact that similarly placed employees in other hospitals under them or under the Delhi Admn. including Lady Harding Medical College are still getting the said allowance and necessary step would need to be taken by them, as has been taken in the case of the applicants in regard to grant of the said allowance. While it has been noted that the said allowance has been stopped being paid to these employees w.e.f. 20-4-98 as per the Ministry of Health and Family Welfare and DGHS directions and also that they have issued directions to the Accounts Officer of Kalawati Sharan Children's Hospital to stop deductions of outstanding HPCA in respect of the applicants with immediate effect and until further orders vide their Office Order dated 15-3-2004, in the light of the decision of the Hon'ble Supreme Court, as referred to hereinabove in the case of Shyam Babu Verma (supra), it will be incumbent on the respondents not to effect recovery of the amounts which have already been paid to the applicants due to no fault of theirs. In the words of the Hon'ble Apex Court 'it shall only be just and proper not to recover any excess amount already paid to them'.

10. Having regard to the above, while the prayer of the applicants regarding grant of HPCA/PCA to them is not allowed in terms of the decision of the respondents declaring the applicants as group 'B' employees, as mentioned hereinabove, this OA is partly allowed to the extent that payments of HPCA/PCA which have already been made to the applicants shall not be recovered from them and that the recoveries which have already been made shall be refunded to them, as the said payments have not been made to them due to any

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fault of theirs nor have these been made due to any mis-representation of facts by them. The respondents are further directed to ensure compliance of this order within a period of three months from the date of receipt of a copy of this order.


(Sarweshwar Jha)
Member (A)

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